United States Court of Appeals

for the Second Circuit

APPENDIX

75-1195

B
P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

- against -

LOUIS WOLFISH,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX.

STANLEY H. FISCHER
Attorney for Defendant-Appellant,
LOUIS WOLFISH
Two Park Avenue
New York, N.Y. 10016
MU 3-0054

PAUL CURRAN
United States Attorney,
Attorney for Appellee,
U.S. Court House
Foley Square
New York, New York

UNITED STATES COURT OF APPEALS
FILED
MAY 20 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

6

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

DOCKET ENTRIES	1a-5a
INDICTMENT	6a-8a
EXCERPTS FROM TRANSCRIPTS	
1. Pretrial Conferences	9a-43a
2. Suppression Hearing	43a(i)-60a(iii)
3. Trial	61a-322a
4. Prosecutors Summation	323a-331a
5. Judge's Charge	332a-369a
6. Motions and Sentence	370a-377a
EXHIBITS	
1. Notice of Readiness filed by U.S. Attorney	378a
2. Defendant's Requests to Charge Jury	379a-386a
3. Israel Search Warrant(Hebrew)	387a
4. Israel Search Warrant(English Translation)	388a
5. Israel Magistrates Court Decision declaring Search and Transfer of Documents to be illegal	389a
6. Motion by Saxe, Bacon, Bolan and Manley to withdraw as counsel	390a-392a
7. Cross-Motion by defendant in opposition to motion by Saxe, Bacon, Bolan and Manley to withdraw as counsel.	393a-396a
8. Motion by Defendant to dismiss Indictment	397a-400a

9. Endorsement Order by Judge Pierce, dated, December 19, 1974 denying motion by defendant to dismiss Indictment 401a

JUDGEMENT 402a

NOTICE OF APPEAL 403a

TESTIMONY

PRETRIAL CONFERENCE	9a-43a
SUPPRESSION HEARING	43a(i)-60a(iii)
FITZPATRICK, THOMAS	44a-49a
Direct	
SLAVINSKI, JOHN	50a-52a
Direct	
HALPERN, AHARON	55a-60a
Direct	
TRIAL	
NEILL, EVA	
Direct	61a-79a
Cross	80a-84a
Recross	86a
Rediredt	85a-86a
BOUNOUS JR., DANIEL BART	
Direct	87a-91a
Cross	91a
Redirect	92a
BLATT, HOWARD	
Direct	93a-97a
Cross	98a-99a
KHEDROWI, EZRA	
Direct	100a
Cross	100a
SCIARAFFO, MARY LOU	
Direct	101a-104a
Cross	105a-110a
STRAUT, DONALD	
Cross	111a
MONOHAN, JOHN	
Direct	112a-113a

MACK, EMANUEL	
Direct	115a-118a
Cross	119a-122a
LISIO, CARMINE	
Cross	123a-122a
HOROWITZ, ISRAEL	
Direct	125a-128a
Cross	129a-140a
Redirect	141a-156a
Recross	156a-158a
STERNHALL, MANACHEM	
Direct	159a-162a
MURRAY, JOHN E.	
Direct	167a-169a·205a-212a
Cross	213a-214a
HALPERN, AHARON	
Direct	175a-194a
Cross	195a-201a
BAHREV, EVA	
Direct	221a-232a
Cross	233a-251a
Redirect	252a-253a,255a
Recross	254a-255a;256a-258a
TAMIR, EVA	
Direct	259a-280a
Cross	280a-288a;302a-305a
Recross	305a(i)
SUMMATION	323a-326a
CHARGE	332a-369a

D. C. Form No. 100

JUDGE PIERCE [redacted] 73 CRIM. 1036

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	Don D. Buchwald, AUSA
LOUIS R. WOLFISH	264-6424
	For Defendant:

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED				
			DATE	NAME	RECEIVED	DISBURSED	
(05)							
Fine,							
rk,							
Marshal,							
Attorney,							
Commissioner's Court, 18							
1341							
ail fraud.							
(Three Counts)							

DATE	PROCEEDINGS
-15-73	Filed indictment and ordered sealed. B/W ordered. Gagliardi,J.
-15-73	B/W issued.
-19-74	Indictment ordered unsealed. Tyler,J.
3-4-74	Deft.(atty. present) Pleads not guilty. Motions returnable in 10 days. Bail fixed at $25,000. P.R.B. secured by $2,500. Case assigned to Judge Bauman for all purposes. Pollack,J.
3-19-74	Filed notice of motion and affdvt. to enlarge bail limits. Ret. 3-22-74.

Cont'd on page 2

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
3-25-74	Filed MEMO END. on motion filed 3-19-74. Bail limits to include Boston, Mass. for the Week-end of March 23 & 24-74. Motion denied i all other respects. So Ordered. BAUMAN,J.		
3-22-74	Filed Affdvt. of Don Buchwald in opposition to deft. Wolfish's application for enlargement of bail.		
4-15-74	Filed defts. notice of motion for B/P, etc. Returnable 5-3-74.W/Affdvt. in support.		
4-15-74	Filed defts. memo of law in support of motions.		
4-22-74	Filed following papers received from U.S. Mag. Docket Sheet, indictment warrant, disposition sheet, notice of appearance, Save,Bacon,Bolan & Mauley 39 E.68th St.NYC., & Appearance bond in the amt. of $25,000 secured by $2,500.		
5-3-74	LOUIS WOLFISH - Filed defts. notice of motion for B/P.		
5-3-74	Filed affdvt in opposition to defts. pre trial motion.		
5-3-74	Deft. (Atty Present) Pre-trial conf. held. Trial set for 7-2-74. Bail limits extended to include state of Mass. BAUMAN,J.		
6-14-74	Pre-Trial conference held and continued to July 1, 1974 @ 9:30 AM BAUMAN, J.		
7-8-74	Filed pltff's Notice of Readiness for Trial, on or after 1-22-74.		
7-11-74	Filed Notice of Reassignment of this action to Judge Pierce.		
8-7-74	Deft.(atty present) P.T.C. held, Hearing on motion to supress begins Jan.6,1975 Rm.36 and trial to follow immediately. Bail cont'd...Pierce, J.		
8-12-74	Filed Deft's memorandum in opposition to Gov't motion for an order directing the deft. to furnish handwriting exemplars.		

cont'd on page #3

DATE	PROCEEDINGS
8-21-74	Filed Govt's. affidavit and notice of motion for an order directing the deft. to furnish the Govt. certain handwriting exemplars in both English and Hebrew on September 3, 1974 at 11:00 A.M.
8-21-74	Filed MEMO-ENDORSEMENT on Govt's. motion filed on 8-21-74. The Deft. is directed to comply with the request. Submit order.....Pierce,J.
8-30-74	Filed Deft's. affidavit and notice of motion for an order suppressing any and all documents and papers seized by agents or representatives of the Israeli govt.
8-30-74	Filed Deft's. memorandum of law in support of motion to suppress.
9-16-74	Filed ORDER that the deft. furnish certain handwriting exemplars in both English and Hebrew as directed on 10-2-74.....Pierce,J. (mailed notice)
11-22-74	Filed transcript of record of proceedings dated 8-7-74.
12-16-74	Filed affidavit & notice of motion of Saxe, Bacon, Bolan & Manley for an order granting leave to withdraw as counsel for deft., ret. sine die.
12-18-74	Filed deft's. (Pro Se) affidavit & notice of motion for an order striking out the statement of readiness filed by the U.S. Attorney & dismissing the indictment for violation of the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases.
12-20-74	Filed deft's. (Pro Se) affidavit & notice of cross motion for an order directing a hearing to fix the value of the services of withdrawing counsel & to direct him to pay the balance to the deft., etc.
12-20-74	Filed supplemental affidavit of Michael Rosen (Saxe,Bacon,Bolan & Manley in support of motion to be relieved as counsel.
12-23-74	Filed MEMO ENDORSEMENT on deft's. motion filed 12-18-74. The Court having indicated that pretrial motions wereto be filed by 8-30-74 & the motion herein was filed well after the time period allotted had expired, the Court hereby declines to rule on the merits of the motion herein. SO ORDERED. .....Pierce,J. (mailed notice)
12-26-74	Filed statements in support of deft's. notice of cross motion, filed 12-20-74.
12-30-74	Filed affidavits of Israel Horowitz, et al. in support of deft's. notice of cross motion, filed 12-20-74.
12-31-74	Filed MEMO ENDORSEMENT on motion of Saxe Bacon Bolan & Manley filed 12-16-74. Motion to withdraw as counsel is denied. Should the deft. be able to obtain new counsel fully prepared to proceed to trial of this case on 1-6-75 defense counsel herein could then renew his application. SO ORDERED.....Pierce,J.
1-9-75	Filed envelope Court's Exhibit 4 in the above entitled matter is ordered sealed by the Court and to be placed in the Clerk's office vault in Room 602, and is to be opened only by order of the Court.....Pierce,J.

-over-

	PROCEEDINGS
1-9-75	Filed true copy of U.S.C.A. mandate. The petition for a writ of mandamus with motion motion for a stay is hereby denied. (mailed notice)
1-16-75	Filed CJA Form 23, deft's, financial affidavit.
1-6-75	Hearing begun on motion to suppress and concluded. Motion denied. Trial begins with a jury.
1-7-75	Trial continued.
1-8-75	Trial continued.
1-9-75	Trial continued.
1-13-75	Trial continued.
1-14-75	Trial continued.
1-15-75	Trial continued.
1-16-75	Trial continued. Judge Charges jury. Deliberations begun.
1-17-75	Jury deliberations continue. Jury returns with a verdict of guilty on counts 1,2 &3. Pre-sentence investigation ordered. Sentence March , 1975 at 4:30 - Room 1306. Bail is increased to $30,000 cash or surety bail bond and is to be posted by 4 P.M. Monday, January 20, 1975. If bail cannot be posted at that time, deft. is to surrender to U.S. Marshal in lieu of posting bail. Bail limits to include Southern & Eastern Districts of New York.....Pierce,J.
1-20-75	Bail reduction hearing held-Deft. & his atty. present. Bail conditions set on 1-17-75 are hereby amended as follows. Original bail of $25,000 P.R.B. secured by $2500 cash to be re-written to facilitate new bail. Bail is now set in amount of $30,000 P.R.B. secured by $5,000 cash, to be signed by Rivi Abramson & Rabbi Wolofsky either of whom is to submit a deed as further security for the bond. The new bail is to be posted by 4 P.M. Tuesday 1-21-75 or he is to surrender to U.S. Marshal.....Pierce,J.
1-20-75	Filed Superceding Appearance Bond in the sum of $30,000.00 secured by $5,000.00 cash, cosigned by Rabbi Morris Wolofsky & Mrs. Rivy Abramson, & further secured by surrender of deed to home by either of the two co-signers - acknowledged by the Clerk.
1-29-75	Filed transcript of record of proceedings dated 3-4-74.
1-29-75	Filed transcript of record of proceedings dated 5-3-74.
1-20-75	Filed transcript of record of proceedings dated 6-14-74.
1-29-75	Filed transcript of record of proceedings dated 1-3-75.
1-31-75	Filed transcript of record of proceedings dated 1-6-75.
1-31-75	Filed transcript of record of proceedings dated January 6,7,8,9,14, 1975.
1-31-75	Filed transcript of record of proceedings dated January 15,16,17, 1975.
2-3-75	Filed letter from Michael Rosen, addressed to Judge Pierce, dated 1-29-75.
2-3-75	Filed MEMO ENDORSED on letter filed 2-3-75. In light of the fact that deft's. counsel has made no request in connection with the matters discussed in the letter herein, no issue requiring judicial action is before this Court.....Pierce,J.
2-19-75	Filed transcript of record of proceedings dated Dec.17,23, 1974.

Cont'd on Page #5

D

DATE	PROCEEDINGS
3-11-75	Filed Govt's. affidavit in opposition to deft's. motion to suppress.
3-11-75	Filed Govt's. affidavit in opposition to any maneuver to adjourn trial date.
3-11-75	Filed Govt's. affidavit in opposition to deft's. motion to have Saxe, Bacon, Bolan & Manley, withdraw as attorney's, for deft.
3-11-75	Filed Govt's. memorandum of law in opposition to permitting deft. to undertake any post-verdict inquiry of jurors.
3-11-75	Filed Govt's. memorandum of law on admissibility of testimony as to deft's. falsification of handwriting exemplars.
3-11-75	Filed Govt's. requests to charge.
3-11-75	Filed Govt's. requests for voire dire instructions.
3-11-75	Filed Govt's. memorandum of law in opposition to deft's. motion to suppress.
3-13-75	Filed transcript of record of proceedings dated 1-6-75.
3-13-75	Filed transcript of record of proceedings dated 1-24-75.
3-31-75	Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE and ONE-HALF (3½) YEARS on each of counts 1,2 and 3 to run concurrently with each other. Pursuant to the provisions of Title 18, U.S. Code, Section 4203(a)(1), the deft. shall become eligible for parole after serving a term of ONE (1) YEAR. Execution of sentence is stayed pending appeal.....Pierce,J. Issued commitment 4-2-75.
4-1-75	Filed Deft's. notice of appeal from the judgment of conviction entered against him on 3-31-75. Mailed copies to Louis R. Wolfish, 64 Essex Street, N.Y.C. 10002 and U.S. Attorney's Office.
4-2-75	Filed ORDER that all documents introduced as evidence are to be kept in the custody of this Court, the Court of Appeals or the Supreme Court until such time as all judicial proceedings in connection with this case have been completed. The U.S. Attorney, S.D.N.Y. and his Assistants are hereby empowered and directed to take all necessary and proper actions in carrying out this Order.....Pierce,J.
4-4-75	Filed Deft's. requests to charge.
4-4-75	Filed Govt's. supplemental request to charge.
4-4-75	Filed Govt's. second supplemental request to charge.

DB:vp
72-1510

6a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 CRIM. 1036

UNITED STATES OF AMERICA :

: INDICTMENT

- v -

: 73 Cr.

LOUIS R. WOLFISH, :

:

Defendant. :

:

-x

U.S. DISTR CT COURT
FILED
NOV 15 1973
S. D. OF N. Y.

COUNTS ONE THROUGH THREE

The Grand Jury charges:

1. From on or about December 15, 1970, up to and including March 30, 1972, in the Southern District of New York and elsewhere, LOUIS R. WOLFISH, the defendant, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud Bankers Security Life Insurance Society ("Bankers Life"), and for obtaining money and property from Bankers Life, by means of false and fraudulent pretenses, representations and promises.

2. It was part of said scheme and artifice that the defendant LOUIS R. WOLFISH would and did falsely and fraudulently represent that he had died on January 7, 1971, and that he thereby would and did obtain $180,484.32 in death benefits from two life insurance policies issued

by Bankers Life on his life, and would obtain an additional $20,398.87 in death benefits from another life insurance policy on his life issued by the Postal Life Insurance Company which had merged into Bankers Life.

3. It was further a part of said scheme and artifice that the defendant, LOUIS R. WOLFISH, would and did fraudulently obtain and fraudulently submit to Bankers Life a document which purported to be a death certificate issued by the Minister of the Interior of the State of Israel stating that Louis R. Wolfish died on January 7, 1971.

4. On or about the dates set forth below, in the Southern District of New York, LOUIS R. WOLFISH, the defendant, for the purpose of executing and attempting to execute said scheme and artifice, unlawfully, wilfully and knowingly did cause the Claim Department of Bankers Life in Washington, D. C., to place certain matter, described below, in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service,

and to be delivered by mail according to the directions thereon:

Count	Date	Addressee	Description of the Matter Mailed
1	September 20, 1971	Mrs. Marcia Wolfish 94 North Main Street Spring Valley, N.Y. 10977	Letter
2	December 27, 1971	Marcia Wolfish 94 North Main Street Spring Valley, N.Y.	Check for $180,484
3	January 24, 1972	Mr. Howard Blatt General Agent Bankers Security Life Insurance Society 102 Maiden Lane New York, New York	Check for $20,398.87

(Title 18, United States Code, Section 1341.)

Joseph Mordetta
FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

vs. 73 Cr. 1036

LOUIS WOLFISH, :

Defendant.

----------x

December 17, 1974
4:30 P.M.

B E F O R E :

HON. LAWRENCE W. PIERCE,

District Judge.

APPEARANCES:

PAUL J. CURRAN, ESQ.,
United States Attorney for the
Southern District of New York
STEVEN A. SCHATTEN, ESQ.,
Assistant United States Attorney

SAXE BACON BOLAN & MANLEY, ESQ.,
Attorneys for Defendant
MICHAEL ROSEN, ESQ., of Counsel

not easy generally and it becomes harder with Mr. Wolfish sitting next to me, but there are things which are hard and I guess I might as well make my position clear.

There are a couple of branches to my application. The first one, and I say to the Court and represent with all sincerity, this is all made in good faith and not for purposes of delay, although I fully recognize if the Court entertains the motion it would result in a delay. Rabbi Wolfish is a former lawyer and if I say anything incorrect --

THE COURT: In New York?

MR. ROSEN: Yes. If I say anything incorrect, I am sure the rabbi will correct me.

THE DEFENDANT: Or Mr. Schatten will.

MR. ROSEN: Please. As we have been progressing through this litigation -- I have a lot of personal warmth for the rabbi and his plight and his family -- has a wonderful family with six children -- but there came a point, I can't tell you exactly when, your Honor, when we were discussing certain of the tactics at trial when the rabbi indicated to me, a la my partner, who had once been confronted with a legal situation and summed up in his own defense, that this would be the way he would like his case tried.

Again the rabbi said he would make the motion himself pro se and put my firm's name on the papers and I said I would disaffirm anything like that. This is, I think only three that I have recalled to your Honor, of a conflict between the rabbi and myself which I say to the Court, among other things, it has caused me to feel that no matter what the rabbi might feel.

He told me he would oppose this motion and now he may have some other thoughts, I don't know. It's just that it's pretty tough when you are faced with representing a man who could go to jail, if you don't feel you are on the same wave length, especially on how to conduct a trial, especially if he doesn't have faith in your judgment. That's a pretty heavy burden.

I think to protect the rabbi more than anything else he should get a lawyer who sees eye to eye to him and doesn't have these conflicts.

In addition, and I think it's my duty to fill out the record, we were initially brought into this case by a group of rabbis who called my partner and asked whether we would give them a conference and they told us about Rabbi Wolfish's plight and made certain representations. Some of them I think I was present for, if not all of them, about the compensation in this case. I have always known

The Second Circuit cases make abundantly clear that the Court ought not be exposed to having a defendant's fifth and sixth amendment rights behoved as a license to disrupt the administration of justice and I must tell the Court in all candor, that appears to the government to be going on right here when you talk about a motion being filed some three, three and a half weeks before a trial that has been long fixed for January 6, 1975.

That in essence is the government's position.

THE COURT: All right, Mr. Wolfish, is there anything you wish to say at this time?

THE DEFENDANT: Yes, your Honor. First of all I want the record to clearly show, your Honor, that I never retained Mr. Rosen. Inever retained Saxe, Bacon or whatever the name of that firm is. I retained Roy Cohn. That's who I called. That's whom I met with. That's to whom the monies were given as the retainer.

So as far as I am concerned, Mr. Rosen, or the law firm of Saxe, Bacon, or whatever it may be, do not have any right to represent me as either attorneys of record or as trial attorneys.

The retainer was with Roy Cohn.

THE COURT: Did you note that when Mr. Rosen

office received a notice of appearance for Louis Wolfish and the name of the attorneys were Saxe, Bacon, Bolan & Manley by Michael Rosen and it appears to be Mr. Rosen's signature.

THE COURT: Good enough.

THE DEFENDANT: I don't question that document, your Honor. I don't know what he filed.

THE COURT: Move on.

THE DEFENDANT: All I can tell you, your Honor, is that my first contact was with Mr. Roy Cohn by phone, my second contact was with Mr. Roy Cohn in person and my third contact was with Mr. Roy Cohn in person.

THE COURT: I understand that. Move on to the next point.

THE DEFENDANT: If there is any question on this point, the group of rabbis and relatives who came with me retained Roy Cohn. It was clearly understood and they can very well testify to this if your Honor chooses to hear what they have to say.

THE COURT: All right, next point.

THE DEFENDANT: I have always pressed Mr. Cohn and Mr. Rosen for a quick and speedy trial. This motion for withdrawal came to me as a complete surprise.

When Mr. Rose told me, I think it was approximately

towards the early part of last week or the latter part of the week before, that he was going to make a motion to withdraw, I told him clearly that the motion to withdraw, if it is to be made, has to be made by Roy Cohn, who is my attorney, not Mike Rosen, nor the law firm of whatever names they do business under.

I now find myself in the peculiar position, your Honor, of finding Mr. Rosen, who supposedly I imagine is here representing both Roy Cohn as well as the law firm of Saxe, Bacon claiming that they want to withdraw and making certain allegations, your Honor, whereby I am placed in the position now where I am being attacked by the very attorneys or attorney or law firm who are supposed to represent my interests.

THE COURT: What is your reaction to Mr. Rosen's request, assuming he is here on behalf of the firm of which he is a member of?

THE DEFENDANT: My initial reaction when he first told me this was that I was against it, and I told him that. I said this is --

THE COURT: What is your position now?

THE DEFENDANT: My position right now, in view of the allegations made in his affidavit, as well as the allegations which he just now made, is that I find that I

There is no requirement that an attorney stultify himself by making meritless arguments or motions. A defendant in a criminal case does not have a constitutional right to an attorney with whose advice he agrees."

Now, this is what I propose to do, gentlemen. If Mr. Wolfish, who appears to wish to be represented by counsel in the trial of this case, is able to obtain counsel by the trial date which has been set, namely January 6th, counsel who is prepared to begin the trial of this case on that date, I will entertain an application to have that counsel substituted for you, Mr. Rose.

In view of his financial situation I am prepared at this time to refer the matter, that is the defendant, to a magistrate in order that a magistrate can make a determination as to whether he can find someone either through the Legal Aid Society or through the list of criminal CJA attorneys who can take this case and try it as per that schedule.

I say again if that type of person, an attorney can be found whose schedule permits him to go forward with this trial, then I will grant your application, very likely; that is the application you make on behalf of your firm to be relieved of this obligation.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

vs. 73 Cr. 1036

LOUIS R. WOLFISH, :

Defendant.

----------x

December 23, 1974
4:30

B E F O R E :

HON. LAWRENCE W. PIERCE,

District Judge.

APPEARANCES:

PAUL J. CURRAN, ESQ.,
United States Attorney for the
Southern District of New York
STEVEN SCHATTEN, ESQ.,
Assistant United States Attorney

(No appearance on behalf of Defendant)

dhjw

THE CLERK: United States of America versus Louis R. Wolfish.

MR. SCHATTEN: Ready for the government, your Honor.

THE COURT: All right, Mr. Schatten, I see Mr. Wolfish the defendant is present. Let the record show that my chambers have been in touch with the attorney for Mr. Wolfish, Mr. Michael Rosen, to inform him that this pre-trial conference had been scheduled and Mr. Rosen had already made arrangements to leave the country. No one else from his firm could be here during this pre-holiday period, so we sought his permission to proceed without him and he gave us that permission. Referring to Mr. Michael Rosen.

THE DEFENDANT: May I make a statement for the record, your Honor?

THE COURT: You will have an opportunity in a moment.

Further, I asked that Mr. Rosen and Mr. Cohn submit affidavits on one of the questions which was raised during our last pre-trial conference, and Mr. Schatten and Mr. Wolfish, I have received affidavits from each of them. Each of them indicating that they didn't understand that Roy M. Cohn personally had been engaged to represent the defendant.

Mr. Rosen points out that a notice of appearance was filed in the name of Saxe, Bacon, Bolan and Manley, and he indicates that he personally arranged for the surrender of the defendant and appeared in court with him on every occasion since. He says he believes Mr. Coyn has never appeared in court in this case, and he doesn't believe that Mr. Cohn ever met or spoke with the defendant and he believes that the firm was engaged, not Mr. Cohn personally.

Roy Cohn writes in an affidavit that there was an initial telephone conversation, he uses the plural, conversations, and the meeting with the defendant and his family and friends. He says other than that he's had no conversations or meetings with the defendant and he says that he told the defendant that his partner, Michael Rosen, would be handling the case and that Mr. Rosen has appeared in court on each occasion without Mr. Cohn.

He says that he didn't tell Mr. Wolfish that his case and/or the trial would be exclusively handled by him, and he was not personally retained as counsel.

He said he would be in on the decision-making process but he states again he didn't tell the defendant that he would try the case.

Now, further, there is one other thing. You

will recall at our last meeting I directed the defendant to appear at 10:30 the next day before Magistrate Raby for the purpose of seeing whether or not counsel might be assigned under the Criminal Justice Act. Mr. Wolfish did appear, the magistrate has submitted a report.

He indicates in that report that he, the magistrate, contacted one Frederick Block on December 18, 1974, who is a member of the CJA panel and a former Assistant United States Attorney, described as having considerable experience and ability in the handling of mail fraud cases, and he indicates that the attorney consented to serve as an attorney for the defendant in the event he was appointed.

Mr. Wolfish appeared in court while the magistrate was still discussing this matter with Mr. Block and Mr. Wolfish indicated that he didn't at this time desire counsel to be appointed for him, explaining that he had already retained Roy Cohn, and that although Mr. Cohn's firm had filed an application to be relieved as counsel, he, Mr. Wolfish, opposed this application and insisted upon his right to be represented by Mr. Cohn personally.

He further stated that in the event that the application by present counsel to be relieved should be granted, he didn't know whether he would accept Court appointed counsel. The magistrate concludes that pending

further advice from the Court he was holding in abeyance the matter of the prospective appointment of Mr. Block as counsel for the defendant.

Now, let me hear from you now, Mr. Wolfish.

THE DEFENDANT: Your Honor, there is no question --

MR. SCHATTEN: Your Honor, may I just interrupt? I take it the Court has raised a point that Mr. Rosen has no opposition to this session going forward. I take it the same is true of Mr. Wolfish?

THE COURT: Good point. Mr. Wolfish, you are a former attorney. You know that you have a right to withhold making any statement unless you have counsel present and you have retained counsel in this firm.

Do you wish to make a statement or do you wish to wait until your attorney can be present?

THE DEFENDANT: I wish to make a statement with reference to what your Honor just said, that my attorney, Mr. Rosen, has waived his appearance both for himself as well as for the firm in not appearing here today pursuant to the instructions of the Court and that he's waived his appearance and that I am not to be represented by counsel.

THE COUPT: I didn't instruct him to be present. I told him there would be a pre-trial conference. He

indicated that he had made commitments to be out of the country with his family -- they were long-term commitments. In view of the fact that we have a trial date set for January 6 and we need to know what it is you wish to do, I asked him could we proceed in his absence and he indicated that he had no objection.

THE DEFENDANT: Did your Honor or his clerk or chambers instruct him to direct me to be present today?

THE COURT: You were directed to be present.

THE DEFENDANT: Well, if I'm directed to be present, your Honor, I don't waive the right to counsel. I insist that my attorney be present and I will not in any way, shape or form like to leave the impression that I am waiving the right to counsel. It is an inherent right which I have as a defendant.

THE COURT: You are right.

THE DEFENDANT: Which my counsel cann't waive for me.

THE COURT: You are right, counselor, Mr. Wolfish. You have that right, and you may assert it and this Court recognizes it and you be here on January 6th at 9:30 in the morning prepared to try this case with your lawyer.

There is no further matter to discuss in view

of that statements. I have made every effort to protect your constitutional rights. You have indicated just now that you wish to proceed with your counsel present. You shall have that opportunity. This case will proceed on January 6th. Be prepared for the selection of the jury. That will occur at 9:30 in the morning.

Bail is continued.

THE DEFENDANT: Your Honor --

(Case adjourned)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 73 Crim. 1036

LOUIS R. WOLFISH, :

Defendant. :

----------x

January 3, 1975
2:15 p.m.

BEFORE: HON. LAWRENCE W. PIERCE,

District Judge

APPEARANCES:

PAUL J. CURRAN, ESQ.
United States Attorney for the
Southern District of New York
BY: STEVEN A. SCHATTEN, ESQ.,
Assistant United States Attorney

SAXE, BACON, BOLAN & MANLEY, ESQS.
Attorneys for defendant
BY: MICHAEL ROSEN, ESQ.,
Of Counsel

THE CLERK: United States of America versus Louis Wolfish.

MR. SCHATTEN: Ready for the government, your Honor.

THE COURT: We have present Mr. Steven Schatten for the government.

We have Mr. Michael Rosen for the defendant and the defendant Mr. Louis Wolfish.

I have called this conference in order to settle the problem that has arisen with respect to the question of defense counsel and to put this matter in perspective I think it best if some background is briefly set out.

The case was originally assigned to Judge Bauman on March 4, 1974. Subsequently the case was assigned to me on July 11, 1974. On August 7, 1974, I held a pretrial conference at which time the case was set down for trial for January 6, 1975. On December 16, 1974 defense counsel moved for leave to withdraw as counsel, giving as his reasons that disagreements had arisen between himself and Mr. Wolfish with respect to trial strategy. Counsel also stated that Mr. Wolfish was opposing the motion.

The motion for leave to withdraw was denied at a conference held on December 17, 1974. At that time the Court indicated that should Mr. Wolfish be able to obtain new

counsel, prepared to go forward with the trial on January 6, 1975, defense counsel could renew his application to withdraw at that time.

Following that Mr. Wolfish filed two motions pro se. On December 18, 1974 he moved to have the government's notice of readiness stricken and the indictment dismissed.

By endorsement order dated December 23, 1974 the Court declined to rule on that motion. On December 20, 1974 Mr. Wolfish filed another pro se motion. This time he requeste a hearing to fix the value of the services of withdrawing counsel and to direct that counsel pay the balance to the defendant.

In the affidavit in support of his application, the defendant asserted that he had never hired Mr. Rosen in the first instance but rather had hired Mr. Cohn.

The Court has not yet ruled on that application.

To complete the chronology, I should note that on December 30, 1974 the defendant filed a pro se application for a mandamus, seeking to either have the indictment dismissed or the trial date adjourned in order to conduct a hearing on defense counsel's motion to be relieved, and the defendant's motion to fix the value of counsel fees.

That application was denied by the Second Circuit; so that as matters stand now, the case is scheduled to proceed

to trial this coming Monday, January 6, 1975.

The defendant is still represented by the law firm of Saxe, Bacon, Bolan & Manley, via Mr. Rosen.

Before proceeding further I am willing to hear from each of the parties at this time. First, Mr. Rosen, do you have anything you wish to be heard on at this time? Mr. Cohn was invited to be present and --

MR. ROSEN: Judge, I understood that Mr. Cohn was directed to be present, and I advised your law clerk of a personal situation which for many reasons I would not like to make part of the record here, although if --

THE COURT: In any event, you extend --

MR. ROSEN: That's why he is not here today.

Judge, I just found out, out in the hall, that there were certain motions made, especially the mandamus motion. I was not aware of that.

I just received -- well, I probably received it in my office during my vacation. It is a notice of cross motion from Mr. Wolfish asking the Court to fix the value of our services.

Judge, what this man says in these papers, I just must say, I am shocked.

THE COURT: We don't need to argue that motion.

MR. ROSEN: Judge, I understand, but there is one

lhlt

reference I most respectfully ask the Court to permit me for the record to just clear up something here on the very first page, where he talks about a strategic maneuver by my partner, Mr. Cohn, to sum up in his own behalf, which worked successfully for him -- is probably, your Honor, one of the most outrageous arguments to be advanced to the Court.

Mr. Cohn did sum up at one of the trials in which he was a defendant. I happened to have been employed by Joseph E. Brill who was Mr. Cohn's defense lawyer in that case, and I was sitting next to Mr. Brill when he actually keeled over in Room 110 and had a heart attack and was in intensive care for three days, and if Mr. Wolfish thinks that that was a strategic maneuver which he now wants to adopt, that is just not true. Mr. Brill almost died. That's why Mr. Cohn summed up in his own behalf. I was there.

Outside of that, there is absolutely no question that there is no attorney-client relationship anymore. He says it in his papers, and he is right. I don't want to argue the reasonable value, but asking for money back is just -- it is just not to be believed, Judge.

THE COURT: I am not asking you, really, to respond to that application.

MR. ROSEN: I would like to renew my application, Judge.

THE COURT: I am more concerned with us moving forward as scheduled with the case.

MR. ROSEN: Judge, I appreciate the incredible burden that the Court must be under to move cases and to accommodate the government and to accommodate the calendar, and things like that. But at this stage of the game, and I say again I represent to your Honor, not only as a lawyer, but as a man, that there is no communication between the defendant and myself, and there is nothing now but almost poison between us. I don't see how I could represent him. I feel the same way I did before.

If your Honor were to appoint me under the criminal justice system and pass a bill in Congress to give us a half a million dollars, it wouldn't make any difference.

THE COURT: There is a difference, counsel. The poison that you speak of, I cannot say that that does not exist, at least that some difficulty or estrangement exists, I could not make such a statement. But I don't have to be unduly concerned about that because as an attorney, as a professional person, a person admitted to practice in courts of this jurisdiction, I have every reason to know and believe that you will meet your professional responsibility. It may make that responsibility more difficult, meeting that responsibility more difficult, but I can work or move on the

reasonable assumption that you acknowledge your professional responsibility and will handle it accordingly. Go ahead.

MR. ROSEN: I appreciate your confidence and I am sure that I could meet a professional responsibility. But I think there is more to it in a case such as this.

I had initially arranged for the defendant to see a rather eminent psychologist or psychiatrist, I think the man used by the government more than any other psychiatrist, and he couldn't pay him at that point, but out of kindness to me he saw him.

I wanted the case to go a certain way. I still believe it should go a certain way. I think there is a certain disposition in the best interests of the government and the defendant and his family, more than anything else. That still is the problem. I still think the case should be disposed in a certain way.

If your Honor says to me "What do you think as a lawyer, with your professional responsibility; what advice would you give that man?" it wouldn't be the advice -- I don't want to go ahead with what I am saying, but I am saying that this again is part of it, it is not poison, Judge, it is that we don't agree on what is in everybody's best interest.

A lot of the things I have done have been at the express direction of the defendant in making motions and going

this far, but the defendant well knows what approach I wanted to take from the outset of this case. I think it is quite obvious.

THE COURT: You appreciate that if this case should be adjourned for six months from today, there really is no reason to believe that it would be in any different posture than it is right now.

Further, if some other attorney were to find himself standing in your place, there is no reason to believe that that attorney would find himself in any different position than you in terms of the difficulties you have indicated you experienced.

You see that from -- that is what I must see from where I sit.

MR. ROSEN: I understand that, Judge, and I don't disagree with you. I do say that no matter what our personal differences might be, I think the defendant is entitled -- and I am not pleading for him in any way -- to have somebody almost believe in what he is doing. I don't know if that's part of the Constitution, I don't think so, but I am just trying to relate that to your Honor as how I feel.

I think your Honor might be interested in my personal feelings because I am here under a set of circumstances where the papers show that he never hired me, he only thought

I was going to do some menial or mechanical task, and we do the best we can.

Whether what I have done is menial or mechanical, that is my job. I would renew my position, Judge. I think it is a great hardship to me personally and to the firm, and I don't think it is in the defendant's best interests to direct me to start a trial on Monday. I don't know, except for perhaps the expenses attendant in bringing in witnesses, if there are any, what real prejudice will befall the government.

I think if court calendars are congested, perhaps under certain circumstances a case might have to be put over to give him an opportunity to get another lawyer. I think it is a great hardship to direct me to go ahead and pick a jury on Monday.

THE COURT: Mr. Schatten?

MR. SCHATTEN: Your Honor, I am constrained to say that this series of applications, if I can call it that, I cannot use a word other than outrageous. After all the time and attention that the Court has directed to various matters, after the trial date in this case was set on August 7th with notice to all parties, including Mr. Wolfish who was in court, to file motions by August 30th, and after the government had put everyone on notice of the necessity of importing Israeli witnesses, who are now here, we have one day before trial

lhlt

to come, your Honor.

THE COURT: That was advice by Mr. Rosen?

THE DEFENDANT: The advice was given by Mr. Rosen, your Honor. Let me say this, your Honor. I don't deny that Mr. Rosen has been in here in court with me on numerous occasions, I don't deny that Mr. Rosen has prepared numerous papers and motions, but as I was given to understand by Mr. Cohn in the presence of Mike Rosen, the very first time we met, which I believe was February 13th or February 12th, I don't recall, my papers have the exact date, I met with Mr. Rosen, I met with Mr. Cohn, there were six other people present.

It was clearly understood that it was Roy Cohn we were coming to, it was clearly understood it was Roy Cohn we were retaining. He himself said he was going to try the case, that Mr. Rosen only would assist him in pretrial and would assist him on the trial.

The following day, after I retained Roy Cohn, I met with Mr. Cohn again, it was in a hotel bar around the corner from his office, together with Mr. Rosen, when they both informed me the conditions under which I was to surrender It was Mr. Cohn who did the speaking, not Mr. Rosen.

I will admit, your Honor, that since those first two days, I think it was February 13th and 14th, to this very day I have not been able to get through to Mr. Cohn neither

lhlt

THE COURT: How many Israeli witnesses are there?

MR. SCHATTEN: There are a total of seven witnesses who have to come from Israel, some of whom have been here previously.

THE COURT: Some are here now?

MR. SCHATTEN: My understanding is that at least four are here now and one may be on his way.

THE COURT: Mr. Wolfish?

THE DEFENDANT: Your Honor, let me first of all make it abundantly clear that I am not here asking for any adjournment, and I also want to make it clear, as I did in my papers, and Mr. Rosen knows it himself, that at no time did I retain Mr. Rosen, that at no time did I retain Saxe, Bacon. I retained Roy Cohn. He was the only one I knew of by reputation.

I came there with six people to retain him. The affidavits which have been served on everyone, including Mr. Schatten, and he makes no reference to that, conveniently, clearly show that it was Roy Cohn who was retained personally and no one else.

THE COURT: Did you read Mr. Cohn's affidavit as well?

THE DEFENDANT: Let me say this with reference to Mr. Cohn's affidavit, your Honor: I have before me the

lhlt

cancelled check of which I served photostatic copies of on everyone --

THE COURT: First of all, did you read it?

THE DEFENDANT: Yes, I did, your Honor.

I look at the endorsement on the back of this check and I looked at the signature of Roy Cohn on the affidavit. They don't seem to be the same.

In fact, it was my impression, based on what Mr. Rosen told me, that on the day that that affidavit was signed, Mr. Cohn wasn't even in the city here. So how that affidavit was signed by Mr. Cohn, I don't know, and aside from which it doesn't look like his signature.

At this time, your Honor, I would like to have marked into evidence the original of the check, if you would like to see it I would be more than happy to show it to you --

THE COURT: Just a moment now. We have a photostatic copy of that.

THE DEFENDANT: But I would like to have the Court take possession of the original --

THE COURT: No, I am not going to take possession of the check because I don't consider that question sufficiently germane to cause me to move in that direction.

I have seen the photocopy which you have submitte and we have photocopies of both sides of that check, and in

lhlt

fact I will make this a part of your moving papers, if it is not already.

Go ahead from there.

THE DEFENDANT: At no time did I retain anyone except Roy Cohn, your Honor. I am not guilty of any dilatory tactics whatsoever.

Mr. Schatten makes reference to an Israeli witness having been flown in here in September to take my handwriting. I was prepared to show up in September. It was upon the advice of counsel who directed me not to show up because your Honor had directed in his decision "Submit order," and there was no order.

I was prepared to go but Mr. Rosen said "Don't go. There is no order. You are not required to go."

I said, "Well, why did the Judge put into the decision 'submit order'?"

He said, "He probably put it into the decision because he wanted to protect your rights on appeal so that there is a formal order."

I was prepared to go for the handwriting in September. I never asked for an adjournment.

THE COURT: Did you accept his advice and not come?

THE DEFENDANT: Yes. He told me I was not require

lhlt

of the exemplars."

THE COURT: That was in October.

THE DEFENDANT: That was October 3rd, your Honor. Whereupon, Mr. Schatten, as he just pointed out, said "Mr. Wolfish, I hereby inform you, if you don't go ahead pursuant to the court order," -- which, by the way, had never been served on me personally, I hadn't seen it, even until that very day, I was just told orally over the phone there was such an order and that I was to be there.

Mr. Schatten told me,"If you don't proceed, Mr. Wolfish, I am directing the postal inspectors present there, Mr. Slavinski wasn't there then, to immediately arrest you and bring you to court for contempt of court."

Whereupon, I called back to Mr. Rosen's office, and I told the secretary exactly what transpired. She says, "Wait there and I will call you back again."

I waited five, ten minutes. The call comes back.

"Mr. Rosen, we were able to reach him, left a message; give them whatever they want."

Now, this is not the type of representation I had retained this law firm for or Mr. Roy Cohn or Mr. Rosen for, forgetting about the argument who I retained. What kind of representation is this?

THE COURT: Did you give the exemplars?

lhlt

by phone nor in person, even leaving a request to talk to him on the telephone, asking Mr. Rosen to please arrange for a conference, it was just ignored, your Honor.

THE COURT: Does that mean that you expected to approach the trial date, which was very firmly set when we had our pretrial conference in August, without Mr. Cohn.

Since you have had so much difficulty reaching him, what did you expect was going to happen on January 6th?

THE DEFENDANT: As far as I knew, Mr. Cohn was going to meet with me again in preparation for trial. Now we come down to the handwriting exemplars on October 3rd, your Honor. I was told by Mr. Rosen to be here. I asked him, "Will anyone be there from your law firm?"

He said "Either I or Mr. Cohn will be here."

I showed up at Mr. Slavinski's office. Mr. Slavinski wasn't there. There were other postal inspectors. I waited fifteen minutes, a half hour, an hour, no one showed up from Mr. Rosen's or Mr. Cohn's office.

I tried reaching Mr. Rosen's office. No lawyers available. The secretary tells me Mr. Rosen is on a trial in one court and Mr. Cohn in another court. He left a message: Go ahead without him. Whereupon, Mr. Schatten called and I told the postal inspectors,"I am entitled to counsel. I will not proceed without counsel in the giving

THE DEFENDANT: Yes, I did, your Honor.

THE COURT: After you gave those exemplars and having in mind this viewpoint you are presently expressing, did you then undertake to either discharge your attorney and get a new one or do anything else with respect to the matter?

THE DEFENDANT: I asked Mr. Rosen, you know, what should we do. He said "Well, it was a last minute thing. You should not have gone ahead with it. We should have protected your rights, but we can still protect your rights, we will make a motion to suppress on the grounds you did not have counsel."

I said "Fine, if you think that's the best course of action," -- and everytime, by the way, everytime he discussed anything with me, he said to me "I can't give you an answer, I have to discuss it with Roy Cohn."

It was on many of the different motions. I never was able to get a definite answer from him. He would say to me "Well, I am going to recommend to Mr. Roy Cohn that we do as follows and as follows and as follows."

I am not trying to delay the trial in any way, your Honor. I didn't start this -- instigate this dilatory tactic. Where did it eminate from?

THE COURT: Then you are ready to proceed on

lhlt

January 6th?

THE DEFENDANT: As far as I am concerned, your Honor, if Mr. Roy Cohn is prepared to represent me as I retained him on January 6th, I am prepared to be represented by him. I can only presume that Roy Cohn is ready.

THE COURT: Thank you, sir. There are some general principles I have sought to keep in mind in ruling on the questions before me.

These principles were summarized generally by the Second Circuit in United States versus MacMahon, 386 Fed. Sec. 611, 1967, holding as follows:

"There is no doubt that due process requires that a defendant charged with having committed a felony" as the case here, " is to be allowed representation by counsel.

"Nevertheless, a defendant through a deliberate manipulation of this right will not be allowed to thereby subvert sound judicial administration by engaging in delaying tactics."

As the Court in MacMahon put it, "Though a defendant has a right to select his own counsel if he acts expeditiously to do so, he may not use this right to play a cat and mouse game with the Court or to place the trial judge in such a position where in moving along the business of the

lhlt

was being represented by the law firm of Saxe, Bacon through Mr. Rosen.

As I said before, the case was scheduled for trial on January 6, 1975 at the August 7, 1974 conference. More than four months elapsed and everything appeared to be proceeding smoothly. It was not until the very eve of trial, on December 16, 1974, that problems with respect to defense counsel were first brought to the attention of this Court.

At that time the motion for leave to withdraw as counsel was filed. The following day I held a conference on the matter. At that conference it first became evident that it was Mr. Wolfish's position that he was not represented by either the firm of Saxe, Bacon or Mr. Rosen, but rather by Mr. Roy Cohn personally.

To support his position, the defendant has submitted a number of affidavits from various rabbis who apparently were involved in the retention of counsel for the defendant.

In addition, the defendant has submitted a photocopy of a check made payable to Mr. Roy Cohn, presumably as a partial payment for his services.

On the other hand, both Mr. Rosen and Mr. Cohn had filed affidavits denying Mr. Wolfish's contention that Mr. Cohn personally was engaged by Mr. Wolfish. It should be

lhlt

blocked out for literally weeks, if not months, ahead.

As I have indicated earlier, I have one case which it is anticipated will take from three to six months to try, an antitrust case, and it is set for trial in February. I have several criminal cases scheduled for trial before that, so you can see how tight my own calendar must be.

I am further mindful of the policy and rules of the circuit and of this court concerning speedy disposition of criminal matters, and I am aware that this policy recognizes not only the right of a defendant to have a speedy and prompt disposition of a criminal charge, but the right of the public to insist that these matters be disposed of promptly.

Of course, then there is also the matter of the Court's own obligation to handle its calendar in such a fashic as to move the work of this court. Having said all of this, I make the following rulings:

I find that the interests of justice will not be served by an adjournment of this trial.

I find that the defendant has been given a reasonable opportunity to obtain counsel of his own choosing.

I find that defendant's assertion that he has retained Mr. Cohn personally to defend him is insufficient at this late stage of the proceedings to justify an adjournment of the trial.

lhlt

I repeat my ruling with respect to defense counsel's motion to move for withdrawal. That is to say, the motion is denied.

In light of this, there is no need to consider Mr. Wolfish's motion to apportion counsel fees. The case will proceed to trial on Monday, January 6, 1975 at 9:30 a.m., in courtroom 501, at which time we will first dispose of the outstanding suppression motion. So that the record be clear, let me make this final comment:

I am not ruling here that the defendant must accept the Saxe, Bacon firm and Mr. Rosen as his attorneys. He has the right, should he choose to do so, to discharge that firm, or whoever his attorneys might be.

However, this right may not be exercised in a totally indiscriminate fashion. Therefore, should he choose to exercise his right in this regard, certain consequences will flow therefrom in light of the fact that the case will proceed to trial on Monday, and defendant should be aware of these consequences.

The defendant will proceed to trial on Monday with either the Saxe, Bacon firm representing him, that may mean that Mr. Rosen on behalf of that firm will be the trial attorney; or, on the occasion of us proceeding to trial on that date, someone else of Mr. Wolfish's choosing may be

lhlt

present to represent him.

If a new attorney appears on Monday, we will still go forward with the trial. I will not allow defendant's present attorneys to withdraw from this case until new counsel indicates a readiness to take over the full representation of the defendant and go forward with the trial, which means we may have both a new counsel and present counsel seated side by side until such time as that event occurs.

A third possibility is that Mr. Wolfish may choose if he wishes, to represent himself. The choice, in any event, is Mr. Wolfish's.

Thank you all for coming in. While we have concluded these matters, I regret that it cannot be to everybody's satisfaction. That is the way matters proceed when these conflicts arise.

In any event, we will proceed on Monday morning. Thank you all.

(Court adjourned.)

43a(i)

it is just, sure, I will send him for a study. It would make sense, probably, in this case.

MR. ROSEN: I also raised to your Honor the question that I can't, in my own mind, since I am not a doctor, state that this man is even capable of going ahead. Of course, that is another question.

THE COURT: That is what remains, the question of his competency to stand trial or otherwise dispose of the case.

MR. ROSEN: I understand that Mr. Wolfish advised me over the weekend that he intends to advise the Court -- I guess he ought to make his own application -- that he be appointed co-counsel in the case. I told him over the phone and when I saw him about 11:00 o'clock Saturday night in my home -- I believe I told him that I was against it, but I believe he ought to make that application now.

THE COURT: No, I am not going to permit that. Is that your application?

DEFENDANT WOLFISH: Well, your Honor, I don't want to shoot dice with my life. As your Honor has said on Friday, and I believe even prior to Friday, that your Honor has no objection to me representing myself, or as Mr. Schatten says in his affidavit, he has no objection

43a(ii)

to having both Mr. Rosen and Mr. Cohn or anyone else represent me. My application is, your Honor, that I would like to have permission of the Court to serve as co-counsel in my case in order to take an active part in my defense since your Honor did not direct Mr. Roy Cohn, who, it is still my position, who I originally retained to defend me so that I could therefore act as co-counsel in this case with Mr. Rosen in conducting my defense.

I don't want to shoot dice with my own life.

THE COURT: That application is denied. It is denied for a number of reasons. I believe that it is within my power to decide in the exercise of hopefully sound discretion of whether to grant it or not and I choose not to grant it in the interests of seeing whatever is to transpire here proceed in the fashion that can be handled in the most orderly and effective manner possible and to assure that you have, from the point of view of the Court, a non-confusing representation should this case go to trial or otherwise, to proceed in some other fashion.

I believe to allow you to participate as co-counsel, in view of the past history of this case with present counsel in the case, apparently able and experienced, willing to carry out the Court's order to proceed, that it would encumber the case and confuse the entire proceedings

to allow you to participate as co-counsel.

Further, the mere suggestion that there is some question as to your competency seriously raises a question as to whether you should be allowed to in any way assume a professional role in terms of your own defense.

So for all of those reasons I decline to allow you to appear as co-counsel on your own defense.

DEFENDANT WOLFISH: May I say just one thing, your Honor?

THE COURT: Yes.

DEFENDANT WOLFISH: I didn't make the motion to withdraw. I didn't initiate it. It was initiated by Mr. Rosen. You recall, your Honor, my original position was I opposed the motion on the grounds that Roy Cohn was my attorney. I know the rules of evidence, your Honor. I know that many times the United States Attorney's office themselves have two or three even Assistant United States Attorneys prosecuting on a case. I know, however, that only one attorney can take on a witness, whether it is on direct or cross examination and I wouldn't want to violate any rules of evidence and I am torn.

THE COURT: Are you still arguing the motion to be allowed to be co-counsel?

DEFENDANT WOLFISH: I just want to say one other

H3a(iv)

rqrf

thing, your Honor.

THE COURT: What is that one thing?

1/6/75
AM 1b

1 rgmch

DEFENDANT WOLFISH: As far as I know, your Honor, as of this day I am still an attorney in good standing in the Southern District. If your Honor seeks to check the records --

THE COURT: And, therefore, what?

DEFENDANT WOLFISH: Therefore, I say to your Honor that I have the right of the Sixth Amendment to choose my counsel.

THE COURT: I have already ruled on all of this. If you have something new to add, say it.

DEFENDANT WOLFISH: I just want to say that I have the right to also defend myself, your Honor. I have this right to also defend myself as co-counsel and, therefore, I say to your Honor, in all interests of justice, to at least permit me to participate in my own defense. I am not someone who is not trained in the law, and I am still an attorney in good standing before the Southern District, as far as I know.

If your Honor seeks to check the records in the clerk's office --

THE COURT: No, I don't need to check the records because I made my decision and I believe I am on sound ground.

You have a right to be represented here by

2 rgmch

counsel.

We have been through all of this. I have made my decisions in the past and I am not changing that in any respect, and I deny the request that you can serve as co-counsel.

Now, back to the competency question. What is your request, Mr. Rosen, with respect to that question?

MR. ROSEN: I make no request, your Honor. I represented my true beliefs to your Honor in connection with a possible disposition. I haven't spoken to my client subsequent to your Honor reaction to me that you would only consider, in the case of a disposition, a 90-day commitment.

THE COURT: If you wish to talk to him, take a moment to talk to him.

All counsel can step out and we can meet you back here in a few minutes.

DEFENDANT WOLFISH: Your Honor, may I know who this individual is?

THE COURT: Yes, he is a court reporter.

DEFENDANT WOLFISH: All right.

THE COURT: Why don't you step out with your client and when you are ready we will proceed.

(Recess)

A Yes. I was assigned the case when it first came into the office in the spring of '72. I would say around March or April or something. It seemed like I had the case around three months. I would say around March or April I was first assigned the case.

Q When you say you were assigned it, did you have total responsibility for the investigation of the case?

A Correct.

Q Did you use any other agents of the United States to assist you in the investigation?

A Yes. It was a Post Office case. Postal inspectors.

Q Could you tell us who it was that you used or worked with in the investigation?

A Yes. John Slavinski.

Q And is he a Postal inspector?

A Yes.

Q Now, when for the first time, if ever, did you become aware that Mr. Wolfish was not in the United States of America? That is, after you became assigned to the case.

A Shortly thereafter, it seems to me. I remember most of the time I had the case was spent trying to locate him and then trying to have a subpoena served on him.

So it seems to me shortly thereafter.

Whether it was in the initial report from the insurance company which was, I believe, the basis of our investigation or not, I can't recall, but shortly thereafter, I would say.

Q Now, you say that you were trying to have a subpoena served on him. Was that a grand jury subpoena?

A Yes.

Q And did you make any attempt to subpoena him?

A Well, we sent a subpoena over to Israel and asked the State Department to try and locate him, yes.

Q Mr. Fitzpatrick, how and when did you learn that Mr. Wolfish was in Israel? If you can recall.

A I can't recall the answer to either one, to tell you the truth.

Q But certainly, would it be fair and honest to say that prior to your terminal leave you knew that he was in Israel?

A Oh, long before, sure.

Q Now, did you ever contact anybody in the State Department or the embassy, either the American or Israeli embassy, in connection with this case?

A Yes.

Q When for the first time did you make that contact

and whom did you contact?

A I can't remember when the first time was. I would place it probably sometime around May or something.

Q Of '72?

A Right.

And that's just -- I remember it was going on all through June and up until the time I left. I remember I thought the thing would be resolved and one thing and another long before I left, and time kept going, telegrams back and forth and things like that, so I have to place it sometime around May, but that's just a rough guess.

Q Would you tell us, please, your best recollection of where you left the telegrams that were going back and forth? Did you leave them in the file or did you take them with you when you left the Government?

A I shouldn't say "the telegrams." Probably it was more likely that there were phone calls.

I remember I made, you know, notations. There may have been a cablegram somewhere, I can't recall, if anything, and I should have left it in the file. I don't recall not leaving anything in the file.

Q Do you recall making notations of these telephone calls?

A Right.

MR. ROSEN: I would ask the Government to produce whatever notations they have so I can cross-examine Mr. Fitzpatrick on this.

MR. SCHATTEN: Your Honor, I would oppose that.

THE COURT: Decision reserved on that.

Q Can you tell us who you spoke to in the trans-Atlantic telephone calls or the calls to the embassies?

A Yes. I remember the State Department there was a fellow named -- I think it was in the American Embassy, a fellow named Gatti. I spoke with somebody in the Israeli Embassy here. I can't remember his name.

There was another person in State towards the end who I was dealing with, Miss, I think, I think it was a Miss Gustafson or something like that.

THE COURT: With whom?

THE WITNESS: The State Department, I believe, your Honor, and I know I called -- I guess it was the American Embassy in Israel on a number of occasions, and they called me. I can remember a couple of phone calls like that, and I think that's where I dealt with Gatti, and then after he, somebody else might have taken his place, but I think most of my communications were with Gatti. He was the one who was, you know, in touch with me

in terms of trying to locate Mr. Wolfish.

Q Well, did you make memoranda or notations of each of these calls, to the best of your recollection?

A Whether it was each -- I made it of most of them, you know, just a date, whom I talked to, and just a sketchy outline.

Q When was the last time you saw those memoranda?

A Last week, I guess, in Mr. Schatten's office.

Q Prior to your commencing on your terminal leave, was there any communications between your office and either the Israeli Government or our State Department, that you know of?

A Well, there was probably one when the subpoena was originally sent to them, asking them to serve it. I imagine -- I am pretty sure that was in writing.

Other than that, I can't recall any other letters that I sent.

Q To your knowledge, did Postal Inspector Slavinski have any communications with either the Israeli Government or with our State Department? To your knowledge.

A I am pretty certain he didn't have any contact on the other side, you know, in Israel. I am pretty sure he didn't there. I think I was doing most of that calling, I think mainly because of bureaucratic red tape

right to that.

I thought I heard Mr. Fitzpatrick say, one, they were trying to serve a subpoena and, two, they were trying to further an investigation.

Now, that's the second part of it, the furthering of the investigation, that I would like to try to develop, as to whether they were seeking evidence or asking Israel to help them.

THE COURT: Proceed.

Q You just heard what I said to the Judge.

To your knowledge, at any time was any request made by either you or our governmental people to either the State Department or Israeli officials to help in the investigation of the charges that you had before you?

A Yes. I would say that it seems to me that the Israeli Government, the Israeli police agreed to help locate him. Now, I don't recall a specific request coming from us about that, but I can recall being pleasantly surprised when I think it was Gatti told me that the Israeli police said they would help us locate him, but that was the extent of the cooperation, you know, of the Israeli authorities that I recall; simply locating him.

Q In other words, so that I understand it fully, you can recall no request ever being made for the Israeli

8 rgmch Slavinski-direct

in, I believe, December of '72.

Again I requested of Mr. Malchi that we would like -- according to this Government's Exhibit 2, it says that the Israeli police, this Commander Roth, had material beyond any doubt that Wolfish himself forged documents. I requested him to supply me with copies of any and all materials that Commander Roth had in his possession.

MR. SCHATTEN: Can we have a date when that occurred?

MR. ROSEN: Excuse me, may I interrupt?

Q Don't you have a file with dates? You are an inspector. You have a file which you keep, don't you?

THE COURT: There has been no showing he is unable to remember the dates.

MR. ROSEN: The U. S. Attorney is asking for the dates.

THE COURT: Only because he hasn't given dates.

Do you recall the dates when you asked for copies of any and all material they had relating to the matter?

THE WITNESS: Right.

A This was in September of '72 I requested this material and was first furnished this copy of the finger-prints, and again I went back to Mr. Malchi in December

and requested all information again.

Subsequently to requesting it again, I finally received a package from Mr. Malchi containing a photocopy of an Israel lab report along with certain photocopies of Israeli documents.

THE COURT: When did you get that?

THE WITNESS: This was in March of 1973.

A I brought the package down here to the U. S. Attorney's Office and we looked at certain of the documents. Of course, I don't understand Hebrew and everything was in Hebrew, so we had to get a translation done.

Up until that point, that was my extent of contact with any Israeli governmental employees.

Q This package from Israel was delivered and examined by you to the U. S. Attorney's Office before the case was presented to the grand jury; isn't that correct?

A That's correct.

Q These documents were used in the grand jury, isn't that correct?

A I don't think the documents were presented in the grand jury, not to my knowledge. They may have been while -- the photocopies were not presented or shown to

in an effort to find something that may sustain the movant's position, it would not seem necessarily unreasonable at this point --

MR. SCHATTEN: Your Honor, I think I can do better than Mr. Toffit. We have Major Halpern here. I did not know that Mr. Rosen was requesting Mr. Toffit. Major Halpern is referred to in the memorandum. I would be delighted to put him on the stand.

MR. ROSEN: Your Honor, I think that is fine. Perhaps your Honor can make rulings, not that your Honor hasn't made good rulings up to now, but if you read this memorandum, because I think this is the springboard and maybe it will be easier if you read it into the record because it's kind of illegible.

Would you mind if I read it in? It's very short.

THE COURT: Go ahead.

It doesn't look so short, but go ahead.

jbrf 4b am 1

MR. ROSEN: "On Thursday July 27, 1972, at 9:40 a.m., I accompanied John Mallon to the National Police Headquarters to present a subpoena to Louis Wolfish, alias Elijay" -- I can't make it out; with an L.

"We spent 20 minutes discussing the case with Inspector Halpern. While awaiting the arrival of Mr. Wolfish, we left the inspector's office before Mr. Wolfish came in for his scheduled appointment. The inspector interviewed Mr. Wolfish alone for five minutes and then brought Mr. Wolfish's Israeli identity card to an adjoining room where we were waiting. H" -- which I assume is Halperin -- or "he showed the card to Mr. Mallon who recorded the facts on the card. The card was issued in the name of Louis Wolfish and included his date of birth, his parents' name and his date of entry into the country.

"Inspector Halpern returned to his office and in a moment his assistant ushered us into the office. Mr. Mallon identified himself as the American Consul and served the subpoena on Mr. Wolfish. Mr. Mallon then presented --"

MR. SCHATTEN: That is July 27, 1972. We will stipulate that that is the date of the subpoena, Judge.

MR. ROSEN: Hey, we got some place, your Honor.

jbrf 2

" Mr. Mallon then presented the U. S. Government air travel request in our envelope with $32 cash to cover the expense of travel to the United States to appear before the District Court in New York next Monday.

"Mr. Mallon asked Mr. Wolfish to sign a receipt for the travel request and the cash. Mr. Wolfish replied that he would not sign anything without the advice of counsel.

"Mr. Mallon recovered the cash and the travel request leaving the subpoena in the possession of Mr. Wolfish. We then excused ourselves and returned to the Consulate."

MR. SCHATTEN: I don't know what that shows, your Honor.

MR. ROSEN: It shows, clearly, Judge, that Mr. Mallon and Mr. Toffit both were in the presence of the inspector who they have out in the hall, who interrogated Mr. Wolfish. He apparently was under arrest at this point.

MR. SCHATTEN: That is not my understanding of it.

THE COURT: Well, let me make this ruling. From what I have heard, it seems to me that the issue that remains outstanding can be resolved by questioning Mr. Halpern.

Q S. H. Roth?

MR. SCHATTEN: What was the first name of Mr. Roth, if you know, Major Halpern?

Q Was he the head of the criminal investigation?

A Then he was the head of the Criminal Investigations Department, Assistant Commander.

Q Did he tell you that he was asked by the Americans to help out in the Wolfish case? Or what did he tell you?

A I was given, I was instructed to find out some things concerning a death certificate which first a copy was given to me. And I was to find out certain details concerning this death certificate with Mr. Wolfish.

Q And did Inspector Roth --

A Assistant Commander.

Q Sorry.

Did Assistant Commander Roth tell you about the American's interest in the case?

A He told me that this is on behalf of, a request on behalf of the Americans, yes.

Q Did you then take it alone or did you work with Commander Roth?

A I was, during this time, working in his department. He was the commander and I worked on this case with my assistant, at this time Sergeant Major Cohen.

Q Did you have any direct contact with American officials in connection with the Wolfish case?

A Yes.

Q What were the names of the American officials, if you can remember?

A It was Mr. Mallon, the American Vice-Counsul in Jerusalem, or Consul, I don't know which.

Q Mallon?

A Yes.

Q How about Mr. Toffit? Do you remember him?

A I don't remember this name. I wouldn't know but I spoke with some Americans. Mr. Mallon I know and some of the others I wouldn't know them.

Q Did you ever have any letters that went back and forth that you saw from the Americans to the Israelis about Mr. Wolfish?

A I had a report from the Postal Inspector later on during the investigation and I think that is all I saw from the Americans.

Q Do you have that report with you?

A Not here, no.

Q Do you know where it is?

A Yes.

Q Does Mr. Schatten have it?

jbrf 6 Halpern-direct

A Probably.

MR. SCHATTEN: I have a copy of it.

A Yes.

MR. ROSEN: Judge, I just received this and this is really a lot. This is about four pages, single-spaced.

I would like an opportunity before the witness is excused just to look at this -- I don't want to interrupt now -- if I might.

Q Now, did you ever write anything to the American authorities?

A No. All I did in writing was to my superior officer.

Q You wrote to Commander Roth?

A Yes, or to his second in command.

Q Do you have a copy of what you wrote to Commander Roth?

A Not with me in the court.

Q Does Mr. Schatten have that?

A I don't know. I have a case file on all of this, but I don't have it with me here.

Q You didn't bring the case file here?

A I have the case but it is not here.

THE COURT: We are not going to spend a lot of

time on that. The witness is here and he has first-hand information of what he did or did not do. Please inquire of him.

Q Did you participate in the search of Mr. Wolfish's apartment?

A Yes.

Q When was the search?

A The search was made on August 9, 1972.

Q Who else was present when you made the search?

A Mrs. Wolfish.

Q She was in the house?

A Yes.

Q Oh.

A Mrs. Wolfish. My assistant, Sergeant Major Cohen and two witnesses, neighbors of Mr. Wolfish, Mrs. I think she was Mrs. Nadler, and somebody else, a rabbi. I forget his name just now.

Q Now, was Commander Roth with youat the search?

A No.

Q Did Commander Roth know that you were going in to search the apartment?

A Yes.

Q Do you know whether Commander Roth notified the Americans that the search was going to be made?

A I don't know.

Q He could have?

A I don't know. I don't know.

Q You don't know either way?

A I don't know what he did. I know what I told him but I don't know what he did.

Q What did you tell him?

A I beg your pardon?

Q What did you tell him?

A I told him that I am going to search his house.

Q You were working under his supervision, is that correct?

A Yes, he was my superior officer.

Q You told him beforehand, didn't you?

A Yes.

Q Did you make out the affidavit to get the search warrant?

A The affidavit was made out by my assistant, Sergeant Major Cohen. He made it out.

Q But Commander Roth knew all that was going on, did he not?

A Yes, of course.

Q I'll ask you now whether you have any knowledge of whether Commander Roth was in touch with the Americans

or in contact or in communication with them before the search.

A I wouldn't -- maybe.

MR. ROSEN: That is enough right now, Judge.

THE COURT: Who asked that the search be undertaken?

THE WITNESS: Nobody asked. I decided that the search has to be made.

THE COURT: That was your decision?

THE WITNESS: It was my decision.

THE COURT: So the idea of making a search began or originated with you?

THE WITNESS: Yes, sir. Yes, your Honor.

THE COURT: Not with Commander Roth?

THE WITNESS: No. I decided to make the search.

BY MR. ROSEN:

Q When did you decide that? When?

A Sometimes before I made it in August '72.

Q Did you decide that in July, when the subpoena was served on Mr. Wolfish?

A No. It was, I know that the search was made, as far as I remember, August 9th, '72 so sometimes before that I decided that the search has to be made. I talked

rgrf 5a am 1

THE COURT: Do you have anything further to offer in connection with this matter?

MR. ROSEN: I would like to ask the Court to permit me to interrogate someone from the State Department and Commander Roth because that is apparently where everybody is pushing the buck to, up to the top.

THE COURT: Tell me what it is that you would elicit from either of those persons.

MR. ROSEN: I would hope to elicit, your Honor, that someone in the State Department, be it Mallon or Toffit or whoever is above them, instructed the Israeli authorities to instigate the search, notwithstanding the Major's testimony, it was his idea. He was under the supervision of Commander Roth. He doesn't know what Commander Roth had going with the State Department. Apparently all the witnesses we have had today keep pyramiding everything up to the top. We are almost up to the top. Roth was speaking to somebody from the State Department, I don't know who. I think that is where it lies.

With all due respect to the Major, who I understand is an alleged police official in Israel, I would say that the searching coming right on the heels of the Toffit-Mallon interrogation of Mr. Wolfish, when Roth was in charge of the investigation leads me to believe that

rqrf 2

someone from the State Department would acknowledge that they asked Israel to assist in gathering information, not merely to serve a subpoena -- I think, your Honor, that that is clear, that this was not merely "Go serve a subpoena."

I mean, what they have done here certainly indicates that more than that was involved and I think that is what I could establish if your Honor would permit me.

THE COURT: Is there anything further beyond that that you propose to offer at this time?

MR. ROSEN: I would like to ask your Honor to rule on the items you reserved on, the communications.

THE COURT: The applications are denied with reference to those instances where decision was reserved. Your application to inquire further is denied. You were at the top in this Court's opinion when you questioned the last witness. The Major has testified that he was the one who made the decision to search: that he was not asked by anyone to search: that he was not asked by Americans or even by his superior. He testified that he discussed it with his superior, Commander Roth, as one would expect he would, and that Commander Roth concurred.

Now, unless I am prepared to believe that he is not telling the truth, we have had the answers that

rqrf 3

we were after in this court and I find his testimony to be credible.

MR. ROSEN: May I make one further observation?

THE COURT: Yes.

MR. ROSEN: I believe the record will bear out that at the beginning of his testimony the Major said -- I think I asked him how did you get into this Wolfish thing and it was at the request of the United States Government.

THE COURT: Yes, he was consistent with the Government's position.

MR. ROSEN: Now we have clearly an illegal search under American standards. No one even tried to show that the warrant was good.

THE COURT: Let me just cite to you from one Third Circuit Court of Appeals case, United States versus Callaway. In that case the validity of a search in Canada was challenged and the Court stated, "We need not determine whether the Toronto police had probable cause to search the vehicles in question. This is because the challenged searches has occurred in a foreign country, and were conducted by foreign law enforcement officials who were not acting in connection or cooperation with domestic law enforcement authorities and the conduct

jbrf 4

Keep your minds open and let them prove it. That is what this country is all about.

THE COURT: Thank you.

Do you have your first witness here?

MR. SCHATTEN: Yes, I do, your Honor.

THE COURT: Call him.

MR. SCHATTEN: The Government calls Eva Neill.

E V A N E I L L, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHATTEN:

Q By whom are you currently employed?

A International Association of Machinists Union.

Q What is your position with the International Association of Machinists Union?

A I am a claims examiner.

Q How long have you been a claims examiner?

A Two years at this place.

Q Had there been a time when you were employed by the Bankers Security Life Insuance Society?

A Yes.

Q When was that?

A From September 1969 through January of 1973.

jbrf 5 Neill-direct

Q What were your duties as a claims examiner with the Bankers Security Life Insurance Society?

A To process death claims.

Q Did you have occasion during the time that you were employed by the Bankers Security Life Insurance Society to have any work done in connection with insurance policies issue to Louis Wolfish as the named insured?

A Yes.

MR. SCHATTEN: May I have these documents marked as Government's Exhibit 8-A and 8-B.

(Government's Exhibits 8-A and 8-B marked for identification.)

xx

Q I want to show you what has been marked as Government's Exhibit 8-A for identification. I ask you, can you identify this document? That is the top of the two cables.

A Yes. This is a telex that we received from the New York office advising us of the death of Louis Wolfish.

Q When did you receive that?

A On September 16, 1971.

Q Is any of your writing on that particular document?

A This is my writing. It is a reply that was sent back to the New York office requesting more information.

Q And I show you Government's Exhibit 8-B

jbrf 6 Neill-direct

for identification. I ask you, can you identify that?

A Yes. This is the telex that I had sent to the New York office requesting more information regarding these policies.

Q Where was your office at the time?

A At 1701 Pennsylvania Avenue in Washington, D.C.

MR. SCHATTEN: At this time the Government offers Government's Exhibit 8-A and B for identification into evidence.

MR. ROSEN: May I have a voir dire, if your Honor please?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q Who is Iris Aponte?

A She was the girl in the New York office, one of the clerks there.

Q So Iris Aponte made these documents up, am I correct, the first one, 8-A?

A Yes.

Q You had nothing to do with the manufacture of that?

A No.

Q Did you have any independent knowledge that a

jbrf 7 Neill-direct

Mrs. Marcia Wolfish lived at 94 North Main Street, Spring Valley, outside of what is on this piece of paper?

A Just the -- no, unless the address was in the policy and I am not sure if it was or not.

MR. ROSEN: Judge, I will object.

THE COURT: You are objecting first to 8-A?

MR. ROSEN: Sure, and 8-B.

THE COURT: You can be heard on 8-A, Mr. Schatten.

MR. SCHATTEN: I offer that to show that this individual, Miss Neill, from the insurance company, received notification at that time of the death of Louis Wolfish and let me ask another question and maybe I can --

THE COURT: All right.

BY MR. SCHATTEN:

Q Was this document received by you from Iris Aponte in the regular course of your business?

A Yes.

Q And is it in the regular course of your business as a claims examiner with the Bankers Security Life Insurance Society to receive such documents?

A Yes.

Q And during the time that you were with the Bankers Security Life Insurance Company, with such documents retained by the company in the files of the

jbrf 10 Neill-direct

xx in evidence.)

MR. SCHATTEN: May I read this to the jury now?

THE COURT: Yes. Now, please keep my instructions in mind with reference to 8-A .

BY MR. SCHATTEN:

Q Government's Exhibit 8-A is called a telex?

A Telex, yes.

(Mr. Schatten read from Government's Exhibit 8-A to the jury.)

Q Can you tell me what this word means here?

A "Deceased".

(Mr. Schatten continued reading to the jury from Government's Exhibit 8-A.

Q And this is the writing done by you?

A That is correct.

(Mr. Schatten continued reading to the jury from Government's Exhibit 8-A.)

THE COURT: Now we are up to 8-B?

MR. SCHATTEN: This is 8-B.

(Mr. Schatten read to the jury from Government's Exhibit 8-B.)

THE COURT: Now, we have received them both as previously indicated, correct?

MR. SCHATTEN: That is correct.

THE COURT: Can you finish up or reach a point where we can terminate in about four minutes?

Q I wanted to show you what has been marked as Government's Exhibit 6 for identification and can you identify this document?

A Yes. This is a regular form letter that I sent to Mrs. Marcia Wolfish at 94 North Main Street, Spring Valley, New York, informing her that we would need the policies and the claimant's statement completed before we could pay the proceeds of the policies.

Q Did you send this, mail this document out?

A Yes, I did.

Q When did you mail it out?

A September 20, 1971.

MR. SCHATTEN: I offer Government's Exhibit 6 for identification into evidence.

THE COURT: Any objection?

MR. ROSEN: Judge, I think this is self-serving. There is no probative value. Louis Wolfish is on trial.

THE COURT: Apart from the probative value which I will rule on, any other objections?

MR. ROSEN: Let me ask a question.

United States of America

vs

Louis R. Wolfish

New York, New York
January 7, 1975-9:45 a.m.

(Trial resumed.)

(In the robing room.)

THE COURT: Have seats gentlemen.

What is the application?

MR. ROSEN: Two applications. I wanted to renew the direction of the defendant his motion made to your Honor to dismiss the indictment on the grounds that the Government had not brought this case on for trial or the trial had not been commenced within the six months period proscribed by the Second Circuit rules and on the further ground that the Government's notice of readiness for trial was not filed in good faith since they had subsequently made application for more discovery and just prima facie could not have been made in good faith if they asked for later discovery.

I would like to make a motion to alert the Court that the fact that WINS this morning, I know I heard it because I cut myself shaving when I heard it, had a nice report about Rabbi Wolfish and the trial that was in progress

and I just heard it and I imagine a lot of people heard it.

Whether the jury -- I think your Honor instructed the jury to report to you whether they heard anything or read anything. I don't believe anything was in the press although I didn't get a chance to check but I do know my office called and said they heard it on the radio and then I heard it.

THE COURT: The indictment in this case was filed, I gather, November 15th, 1973.

What was the date of filing of the notice of readiness.

MR. SCHATTEN: I might point out it was a sealed indictment. It wasn't until sometime in February that the defendant was --

THE COURT: It was ordered unsealed on February 19th and the defendant pleaded not guilty on March 4, 1973.

MR. SCHATTEN: My recollection is, I don't have the file here, was that on July 1, 1974, the notice of readiness was filed. I want to further point out that the Government's application for the exemplars in no manner, shape or form --

THE COURT: I've not asked to be heard on that.

All right? I simply need to know the date the notice of readiness was filed.

MR. SCHATTEN: July 1, 1974, your Honor.

THE COURT: Both applications are denied.

Anything further, counsel?

MR. ROSEN: That I just made now?

THE COURT: Yes.

MR. ROSEN: I take exception respectfully.

THE COURT: One of them being the motion to dismiss on the readiness and the other being the six months rule.

MR. ROSEN: Respectfully except, your Honor.

MR. SCHATTEN: Can I turn over to Mr. Rosen 3500 material with respect to a numberof the witnesses. I am turning over 3501 --

MR. ROSEN: Can't we do this later?

THE COURT: Do it on the record now.

MR. SCHATTEN: 3501 through and including 3525, to Mr. Rosen right now. I will give the Court Reporter a list of what is in 3501 through 3523.

Here, list them.

3501, J. J. Slavinski report dated August 28, 1973 except that statements with respect to certain witnesses have been excised.

3501-A, J. J. Slavinski report dated August 28, 1972.

3502, J. J. Slavinski report dated March 7, 1973.

Would you have a seat, please?

MR. SCHATTEN: May I proceed, your Honor?

THE COURT: Yes.

Q I believe at the conclusion of your testimony yesterday, when we adjourned, I had shown you Government's Exhibit 6 and you had testified that you had mailed this letter out on December 20,1971; is that correct?

A That's correct.

Q And that was your letter to Mrs. Marcia Wolfish, 94 North Main Street, Spring Valley, New York 10977?

A Yes.

THE COURT: That is marked as what?

MR. SCHATTEN: Government's Exhibit 6 in evidence, your Honor.

Q When you mailed out your letter to Mrs. Marcia Wolfish, did you put anything else in the envelope?

A Yes. I put a claimant's statement.

Q I show you what has been marked as Government's Exhibit 15 for identification, and I want to ask you, can you recognize or can you identify that document?

A This is the claimant's statement that is sent on every claim.

Q And was this the form that you enclosed together

5 jbmch Neill-direct

at the bottom it says "Prepared by EN 12/27/71."

Did you prepare this particular document?

A Yes. This was prepared -- the top part was prepared at the time the claim was submitted and the handwritten figures were prepared after the policy came in.

MR. SCHATTEN: I offer Government's Exhibit 7 for identification in evidence.

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q Miss Neill, is there any information on this Government's Exhibit 7 for identification that you received directly from Louis Wolfish?

A No, there is not.

Q Is there any information on this piece of paper that you received directly from Mrs. Wolfish?

A No, there is not.

MR. ROSEN: I object. There is no information on it whatsoever. It's an internal document.

MR. SCHATTEN: I can ask a few other questions.

THE COURT: Proceed.

BY MR. SCHATTEN:

Q Was this a document that was prepared by you in the ordinary course of your business with the Bankers

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q Miss Neill, in regard to what is now marked Government's Exhibit 2 for identification, tell us who submitted that form to you.

A Marcia Wolfish.

Q You are sure about that?

A I am not sure.

Q How do you know Marcia Wolfish submitted that to you?

A This signature says Marcia Wolfish, and it was submitted in the mail.

Q Do you know whether Louis Wolfish submitted it to you?

A I don't know.

MR. ROSEN: I object, your Honor.

THE COURT: The objection is overruled.

The exhibits offered, that is, Nos. 1, 2, 3, 4 and 5, are received in evidence.

xxx (Government's Exhibits Nos. 1, 2, 3, 4 and 5 for identification were received in evidence.)

CONTINUED DIRECT EXAMINATION

BY MR. SCHATTEN:

Q You never met Marcia Wolfish?

(Exhibits handed to the jury)

MR. SCHATTEN: Let me also pass out to the jury Government's Exhibits 6 and 15, and the two cables of yesterday, Exhibits 8-A and 8-B, so some of the other jurors may look at them.

(Exhibits handed to the jury)

MR. ROSEN: While the jury is looking at the exhibits, can we have a brief side bar so we don't take any further time?

THE COURT: Yes.

(At the side bar)

MR. ROSEN: The defendant has instructed me to make the application that he wants to cross-examine the witnesses.

DEFENDANT WOLFISH: This particular witness.

THE COURT: The application is denied.

MR. WOLFISH: Exception, your Honor.

(In open court)

(Pause)

THE COURT: I should tell you all of these documents have been received in evidence and will be available to you once you begin your deliberations. Should you wish to have them, you have but to ask for them in writing.

THE COURT: All right, Mr. Schatten.

Q I notice that two of the three policies have the name Bankers Security Life Insurance Company at the top, and the third one has the name Postal Life Insurance Company at the top.

How did it come to pass that your company, Bankers Security Life Insurance Company, received the policy issued by Postal Life Insurance Company?

A Postal Life Insurance Company was merged with Bankers Security.

Q The effect of this, was it not, was that Bankers Security Life Insurance Company was liable in the event of Louis Wolfish's death on all three policies; is that right?

A That's right.

Q Can you tell the jury what kind of policies the two Bankers Security Life Insurance policies were?

A The decreasing term to age 70.

Q Can you tell the jury and the Court what is a decreasing-term life insurance policy?

A It's a policy issued on the life of the insured for a set premium to continue -- it decreases each policy anniversary. Coverage remains in force until age 70.

mdrf 2b am Neill-direct

Q After you got in documents which have been marked in evidence as Government's Exhibits 1, 2, 3, 4 and 5, namely the three insurance policies, the filled out claimant's statement, and the Hebrew death certificate with its translations, what did you do afterward?

A I entered them into the file and executed the benefits to be paid the beneficiary.

Q I want to show you once again Government's Exhibit 7 in evidence. Can you tell from Government's Exhibit 7 how much the value, the benefits to be paid the beneficiary on the two Bankers Life Insurance policies were?

A On policies 9,020,509 the face amount was $88,000. On policy 939,326 the face amount was $92,400. The total paid included a premium refund of $55.26 on policy 9,020,509 and $29.06 on policy 939,326. The total paid on the two policies was $180,484.32.

Q How do you account for the $70 premium refund?

A In the policy it states just what period the premiums must be paid to, and if they are paid beyond that there is a premium refund.

Q What did you do after you computed the amount to be paid?

A I prepared a jounal voucher.

Q I show you what has been marked as Government's

Claims Department.

MR. SCHATTEN: I offer Government's Exhibit 10-C in evidence.

MR. ROSEN: No objection.

THE COURT: Received.

(Government's Exhibit 10-C received in evidence.)

xx

Q What did you do after you received Government's Exhibit 10-C?

A Completed the voucher to get the check for that $20,058.12.

Q I show you Government's Exhibit 10-A for identification.

Can you identify that?

A Yes. This is the journal voucher requesting, and the premium was $20,398.87 because of an added dividend.

Q And did there come a time when you received the check with respect to that journal voucher after you prepared your journal voucher?

A Yes.

Q I show you what has been marked as Government's Exhibit 10 for identification.

Can you identify that?

A Yes. This is the check drawn to Marcia Wolfish

for $20,398.87, payable for, on policy 306,179.

Q Did you have occasion to receive this check?

A Yes.

Q What did you do with the check after you received it?

A This check was mailed to the general agent, Horowitz-Blatt's office.

MR. SCHATTEN: I offer at this time Government's Exhibit 10 and 10-a in evidence.

MR. ROSEN: No objection, your Honor, to 10-A. May I have a brief questioning on 10?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q Mrs.Neill, what is the piece of paper marked 10?

A This is the check that was drawn for that policy number.

Q Doesn't it say void on it?

A Yes, it does.

Q Who wrote that? Did you?

A No, I did not.

Q Do you know who did?

A The Cashier's Department of Bankers Security.

Q At what time was that written on the check?

A In early March when the check was returned to our office, undeliverable.

Q This check was never cashed then?

A That's right.

MR. ROSEN: I object, your Honor. The check was never cashed. It has no probative value.

THE COURT: Overruled. Received.

(Government's Exhibits 10 and 10-A received in evidence.)

xx

BY MR. SCHATTEN:

Q Mrs. Neill, the word "void" had not been written on the check at the time you mailed the check out to Horowitz-Blatt, is that right?

A No, it had not.

Q I want to show you what has been marked as Government's Exhibit 10-B.

Can you identify that?

A Yes. This is a copy of the letter dated 1-24-72, mailed to Horowitz-Blatt Agency in which the $20,000 check was sent.

Q Can you explain the fact that the first check you mailed out directly to Mrs. Marcia Wolfish at the Spring Valley address and this check you mailed to Horowitz-Blatt. How do you account for that?

A It is company policy to go through the general agent usually but because of the long delay between the date of death and the date of notification and the time the proper documents were submitted so we could pay it, it was mailed directly to Mrs. Marcia Wolfish with the idea that she might need some financial assistance at that time.

MR. SCHATTEN: I offer Government's Exhibit 10-B for identification in evidence.

MR. ROSEN: No objection, your Honor.

THE COURT: Received.

(Government's Exhibit 10-B received in evidence.)

xx

MR. SCHATTEN: At this time can I pass out the four documents in the 10 series to the jury?

THE COURT: Yes.

(Exhibits passed among the jury.

THE COURT: All right, Mr. Schatten. Proceed.

MR. SCHATTEN: I have no further questions of this witness.

THE COURT: You may inquire, Mr. Rosen.

MR. ROSEN: May I have a minute to go through the 3500 material?

THE COURT: All right. We will take a short recess. Move the jury out, Madam Forelady. Do not talk

died, isn't that correct?

A Yes.

Q Did you know who claimed Mr. Wolfish died?

A No, I don't.

Q Have you ever found out of your own personal knowledge who claimed Mr. Wolfish died?

A No, I don't know.

Q So, would it be fair and honest to say that sitting on that witness stand today you don't know whether Louis Wolfish claimed that he had died, do you?

A No, I don't.

Q Now, is it standard procedure in your firm or your prior firm that a check is made as to whether a man and wife have either been divorced or separated before these forms get sent out?

A No. All policies are payable to the beneficiary, named beneficiary.

Q And that would be so even if for example there was a divorce between a husband and wife?

A If she were still the named beneficiary, the proceeds would be payable to her.

Q And that would be the same, even if the people were either legally separated or living apart?

A That is correct.

Q Did you on September 20, 1971, as an agent of the insurance company, mail anything through the United States mails at the request of Louis Wolfish?

A No.

Q Did you, on or about December 27, 1971, as an employee of Bankers Life, mail anything to Marcia Wolfish at the request of Louis Wolfish? To your personal knowledge.

MR. SCHATTEN: I object, because I don't understand it.

Is the question did Mr. Wolfish speak to Mrs. Neill and ask her to request? Is that the question? Or is the question --

THE COURT: I would assume that the word "request" means "ask."

Q In writing or orally, to your knowledge.

A No, not from Mr. Wolfish.

Q To your personal knowledge, did you mail or put anything in the United States mails on January 24, 1972, addressed to a Mr. Howard Blatt at the request, oral or written, of the defendant, Louis Wolfish?

A No.

Q How much money was sent out by your company on the three policies we are talking about? It was

$180,000 --

A Plus $20,000.

Q 200,000?

A Yes.

Q Would it be fair and honest to say that the company has its $200,000 back?

A I don't know.

Q Who would know that?

A I really don't know.

THE COURT: Does the Government concede that?

MR. SCHATTEN: I think he would be entitled to call an appropriate witness to prove whatever he wants to prove.

MR. ROSEN: Thanks, Mr.Schatten.

Q By the way, would you please tell the jury and the Court what you mean by that Mrs. Wolfish was the owner of two policies and was also the beneficiary?

A Yes.

Q Explain that for us, please.

A When a policy is issued, the insured names the beneficiary, and if he wants that beneficiary an owner, she can become the owner at that time and no tax waivers are needed to pay proceeds.

Q Is that what happened in this case?

A I can tell that Mr. Louis Wolfish was the signature of the proposed insured.

Q Of the insured.

I didn't ask you that. Who was the applicant?

MR. SCHATTEN: I object to the argument.

A The applicant is still Louis Wolfish.

Q I call your attention to the last line on the right-hand side of 14-A.

Is the applicant referred to as Marcia Wolfish?

A The applicant-owner, Marcia Wolfish.

Q How about 14-B? Applicant-owner Marcia Wolfish?

A Yes.

Q Okay.

Now, is it not true that an owner of a life insurance policy has total control over that policy?

A Yes.

Q In other words, the owner can change the beneficiary?

A Correct.

Q If the owner has six children, she can make it six children as beneficiary?

A Yes.

Q You can give the money to charity through the

5 jbmch Neill-cross

policy?

A Right.

Q The owner of the two policies adding up to $180,000 was who in this case?

A Marcia Wolfish.

Q Was it Louis Wolfish?

A Not the owner, no.

Q As to the $20,000 policy, who owned that policy?

A Mr. Wolfish.

Q Who was the beneficiary?

A Marcia Wolfish.

Q So all monies payable under that policy would go to Marcia Wolfish?

A Correct.

Q And did your company have a provision that the beneficiary could designate anybody that he or she wanted to receive the funds?

A Not under that policy written by Postal Life, no.

Q Once the funds were payable to the beneficiary, in this case, Marcia Wolfish, she could burn the money, if she wished; is that correct?

A That's correct.

Q You had no control over that?

Q I believe Mr. Rosen asked you a few questions about did Mr. Wolfish request you to do certain things.

I want to ask you: When Government's Exhibits 1 through 5 came in to the insurance company in December of 1971, you don't know who sent them in to the insurance company, do you?

A No, I don't.

Q I notice on Government's Exhibit 2 it says "signature" and there is the writing, "Marcia Wolfish," and the writing of a witness, George A. Rosenberg.

You were not present when Marcia Wolfish supposedly put the signature on there; is that right?

A That's right.

Q And you weren't present when George Rosenberg wrote his name as a witness, were you?

A No.

Q And you don't, in fact, know whose signatures those are; is that correct?

A No, I don't.

Q And in fact, you don't know, do you, who mailed those documents in to the insurance company, do you?

A No, I don't.

MR. SCHATTEN: I have no further questions.

RECROSS-EXAMINATION

BY MR. ROSEN:

Q Do you know who originally got -- made contact with Miss Aponte in New York City?

A No, I don't.

Q And the reason, would it be fair and honest to say that the reason that all these documents start going through the mail was based on an initial inquiry; isn't that correct?

A That is correct.

MR. ROSEN: Nothing further.

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q I take it, however, that you wouldn't have sent out a $180,000 check unless and until you had received Government's Exhibits 1, 2, 3, 4 and 5; isn't that right?

A That's correct.

Q And the same thing was true of the $20,000 check. You had to receive Government's Exhibits 1 through 5 as well as the tax waiver form before you could mail out the $20,000 check to Horowitz-Blatt; isn't that correct?

A That's correct.

MR. SCHATTEN: I have no further questions.

MR. ROSEN: Nothing further.

1971, to the beneficiary, Mrs. Marcia Wolfish, advising her that as of this date, December 22nd, we had not received the policy forms, claimant's statement, or death certificate, and until we did receive such documents we would have to close our handling of the file.

Q Did you send out that letter?

A Yes, I did.

Q I notice the letter cross-refers to a letter dated September 20, 1971.

I show you Government's Exhibit 6 in evidence, and I ask you, is that the letter that you are referring to?

A That's correct.

MR. SCHATTEN: I offer Government's Exhibit 11 for identification in evidence.

MR. ROSEN: I would like to object and state my grounds at the side bar.

THE COURT: All right.

(At the side bar)

MR. ROSEN: Judge, it's obvious what the Government is doing here. They keep trying a case against Mr. Wolfish by introducing letters sent by Mrs. Wolfish. There has been no charge that these two people were in cahoots. There has been no foundation laid that Mrs.

Wolfish was not acting on her own or in any other way or with somebody else other than Mr. Wolfish. There is not a word about Mr. Wolfish in this trial yet, and they keep doing this, I know subject to connection, but I don't know how far this can go.

THE COURT: I am going to deny your motion. You can make additional motions, if you wish, later on in this trial.

MR. ROSEN: Thanks, Judge. I respectfully except.

(In open court)

THE COURT: Counsel objects, and the objection is overruled.

xxx (Government's Exhibit No. 11 for identification was received in evidence.)

MR. SCHATTEN: May I read this to the jury at this time, your Honor?

THE COURT: All right.

Q Before I do, I notice that there is a writing "BB" at the bottom, "Form sent, 12/22/71."

When did you put those writings on the copy?

A BB are my initials, just for file purposes, and the "form sent, 12/22/71" are forms that were sent with this letter to Mrs. Wolfish in the event she had lost

A Miss Neill.

Q What did you do in connection with those documents?

A I reviewed them to make sure that they were properly completed, that everything was apparently in order, and returned them to her for additional processing.

Q Did there come a time when a check was sent out in payment of the two --

MR. ROSEN: We object. We know all about this, that a check was sent out. I think it's repetitive.

THE COURT: Go ahead.

Q Did there come a time a check in the amount of $180,484.32 was mailed out in payment of the two Bankers Life policies?

A That's correct.

Q I show you Government's Exhibit 9 in evidence. Was this the check?

A Yes, it is.

Q Did there come a time when the insurance company received the tax waiver form, Government's Exhibit 10-C in evidence?

A That's correct.

Q Thereafter, did you participate in the approval of the payment of the third policy, namely, the Postal Life

policy?

A Yes, I did.

Q Did there come a time when the check dated January 24, 1972, was mailed out in payment of the Postal Life policy?

MR. ROSEN: Not that it's that important, but I object. I think the witness should testify. Mr. Schatten has been testifying long enough.

The question is what happened next and what did you do.

THE COURT: I thought your earlier point was Mr. Schatten shouldn't even bother to pursue these matters because they were already in evidence.

I see no reason he shouldn't lead the witness through it.

Go ahead. Overruled.

Q Was that check sent out in payment of the third policy?

A That's correct.

Q And that check was mailed, was it not, to Horowitz-Blatt; isn't that right?

A That's right.

Q Who was Horowitz-Blatt, as far as you know?

A Our general agent.

Q I notice that there is the word "void" on the check --

MR. SCHATTEN: I will withdraw that.

I have no further questions of this witness.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. ROSEN:

Q Do you know Louis Wolfish?

A No, sir.

Q Do you know Marcia Wolfish?

A No, sir.

Q At the time you did all this approval, did you know if they were married, separated, divorced, or what?

A We did not know.

Q Did Mr. Wolfish ever tell you to do something or put something in the mail?

A No, sir.

Q Did Mrs. Wolfish ever tell you to do that, to your knowledge?

A To our knowledge, that is what initiated the actual claim process.

Q How about the money you paid out, you got it all back?

A Yes, that's correct.

MR. ROSEN: Nothing further.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q To your knowledge, you don't know whether Mr. Louis Wolfish or Mrs. Wolfish or anyone else, for that matter, sent in Government's Exhibits 1, 2, 3, 4 and 5; is that correct?

A That's correct.

MR. SCHATTEN: Nothing further, Judge.

MR. ROSEN: Nothing further.

THE COURT: Steo down.

(Witness excused)

mdrf 8 Blatt-direct

Q I want to show you what has been marked as Government's Exhibit 10-B-1. Is this the original of the letter that you received?

A Yes, this is the original transmittal form; and a photostat copy of the check.

MR. SCHATTEN: I offer Government's Exhibit 10-B-1 in evidence.

MR. ROSEN: Are you offering it with the attached?

MR. SCHATTEN: Yes.

MR. ROSEN: I have no objection except they forgot to put the word "void" on here. With that reservation I have no objection. This looks like a real check, but it isn't. The real one said void on it but this one doesn't.

THE COURT: Was the word void on that check wne it came to your office?

THE WITNESS: No, it was not.

MR. ROSEN: Then I say it has no probative value.

THE COURT: Overruled.

Received.

(Government's Exhibit 10-B-1 received in evidence.)

xx

Q What if anything did you do after you received the $20,000 check without the word "void" on it?

A We attempted to get it delivered to Mrs. Wolfish

in Spring Valley.

Q What was the result of that experience?

A She couldn't be found.

Q What if anything did you do thereafter?

A I contacted my home office to see if they could find us a better address so we could get the proceeds to her.

Q I want to show you what has been marked as Government's Exhibit 12 for identification.

Did there come a time that you received this document?

A Yes.

Q When did you receive that?

A Approximately March 10th.

Q Of what year?

A 1972.

MR. SCHATTEN: I offer this document in evidence, Government's Exhibit 12.

MR. ROSEN: I object, your Honor.

THE COURT: What is the purpose of your offer?

MR. SCHATTEN: Just to show that this witness received the letter.

THE COURT: All right, I will allow it.

(Government's Exhibit 12 received in evidence.)

xx

MR. SCHATTEN: I am going to read it to the jury, your Honor.

Q It is a memorandum, isn't that correct?

A Yes.

(Mr. Schatten read from Government's Exhibit 12 to the jury.)

Q Does GA stand for general agent?

A Yes, sir.

Q What if anything did you do in response to --

THE COURT: Just a moment. Now, that letter is not received for the truth of whatever is contained in it, but apparently, or I assume, it is to lay the basis for the next question the prosecutor plans to put.

Q What if anything did you do after you received the memorandum dated March 9, 1972?

A I returned the check to the company.

Q I show you what has been marked as Government's Exhibit 13 for identification. Can you identify that?

A Yes, that is my memo to Mr. Giuffra.

Q Who is he?

A Senior vice-president of Bankers Security.

Q What if anything did you enclose with Government's Exhibit 13?

A I sent the check back to the company.

(At the side bar.)

MR. ROSEN: I would like to respectfully ask the Court to excise any reference to the fact that Mr. Wolfish is an attorney. I think that it doesn't add anything to the case and it might prejudice him on a couple of grounds. If he is an attorney, perhaps the jury may hold him to some sort of higher standard than the ordinary person and , number two, why isn't he representing himself or why does he have another lawyer. I don't see where it adds to the case.

MR. SCHATTEN: It seems to me that the whole application -- I assume it has been filled out by Mr. Wolfish and it doesn't seem to me either way that it makes any difference.

THE COURT: Objection is overruled.

MR. ROSEN: Thank you, your Honor.

(In the presence of the jury.)

MR. ROSEN: Judge, I would like to show the witness the documents.

THE COURT: Why don't you hold your cross until the jury has had a chance to look at these papers and then you can start.

MR. ROSEN: Okay.

(Documents handed to the jury by Mr. Schatten.)

(Pause.)

THE COURT: All right, Mr. Rosen, I think you can begin your cross examination.

CROSS EXAMINATION

BY MR. ROSEN:

Q Mr. Blatt, who is John McManus?

A Vice-president and counsel of Bankers Security Life

Q When you say vice-president and counsel --

A I believe that is his title.

Q Counsel would be the lawyer for your company, the company that you are the general agent of?

A Yes, sir.

Q Are you aware of the fact that Mr. McManus told the Government that Mrs. Wolfish made the initial telephone call on September 16, 1971?

MR. SCHATTEN: I object, your Honor.

THE COURT: There is nothing in evidence to that effect.

MR. ROSEN: I am asking the witness whether he knows of his own knowledge.

THE COURT: There is nothing on the record about it, either.

MR. ROSEN: All right.

Q Mr. Blatt, do you know who it was that telephoned

your company in September to report the death of Mr. Wolfish?

A No, sir.

MR. ROSEN: Where are the exhibits -- 14. I'm sorry. I'll wait, Judge.

THE COURT: All right.

MR. ROSEN: Maybe I can do something else. I really don't have much to ask this man.

Q When was the payment stopped on Government's Exhibi 10? Do you know?

A No, sir.

Q The payment was stopped, though, wasn't it?

A I presume so, yes.

Q Well, do you have any question?

A I don't know. I don't know. I have -- I am not working in Washington D.C.

Q So, in other words, all this paperwork and things didn't come out of your office?

MR. SCHATTEN: I object.

MR. ROSEN: Let him answer.

THE COURT: I'll allow the question.

A What paperwork are you referring to?

Q All these exhibits, the interoffice memos, they emanated --

A Several of those memos came from my office.

Q But the claim forms that were submitted to the company, that was in Washington?

A Yes, sir.

Q Not in your office?

A No, sir.

Q When you say you are a general agent, does that mean that you can just sell insurance for them?

A I am a salesman for the company.

Q Are there more than one general agent?

A Yes, sir.

Q You are not the exclusive one in the whole country?

A No, sir.

Q How many general agents like you are there?

A Across the country, I guess about 70 or 75.

Q I show you what has been marked Government's Exhibit 14-A and B. Would you take a look at 14-A and tell his Honor and the jury who is the owner of that policy?

A Marcia Wolfish.

Q Take a look at 14-B in evidence and tell His Honor and the jury who is the owner of that policy?

A Marcia Wolfish.

MR. ROSEN: No further questions.

THE COURT: Any redirect?

MR. SCHATTEN: No redirect, your Honor.

100a

1/7/75
AM 5b

Q And what did you do once you got to the Interior Ministry?

A I spoke with the man who is responsible to manage this register.

Q Did you look at any documents there? Did you look at any --

A In the register.

Q And what did you find in the register?

A I didn't find the name of the deceased was among the names which were in the register.

Q What was the name of the deceased that you were looking for?

A Wolfish; Louis Wolfish.

MR. SCHATTEN: No further questions, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Did you ever hear of a Major Halpern?

A Please? I didn't hear the question.

Q Major Halpern of the Israeli Secret Service. Did you ever hear of him?

A Yes, I know him.

Q How about Commander Roth?

MR. SCHATTEN: I object, your Honor. What is the

Q Do you have a copy of that letter that caused you to send these out?

A No, I don't.

Q Did you give it to the Government, do you know?

A No.

MR. ROSEN: I have to object on the ground no foundation has been laid at this point.

THE COURT: Received, subject to connection, 16 and 17-A through -H.

xxx (Government's Exhibits Nos. 16, 17-A, 17-B, 17-C, 17-D, 17-E, 17-F, 17-G and 17-H for identification were received in evidence.)

CONTINUED DIRECT EXAMINATION

BY MR. SCHATTEN:

Q I want to show you Government's Exhibits 17-A through -H.

You say they are signature cards. Whose signatures are on those cards? And can you describe what each of those cards is all about?

MR. ROSEN: Your Honor, I will have to object. This is not a handwriting expert. I submit she is not qualified.

Q Whose names are on the signature cards?

A Marcia Wolfish and Louis Wolfish.

Q You are now reading from 17-A, is that correct?

A Yes.

Q What is that in the nature of?

A It's a joint account in trust for their son. And the other one is just a joint account in the same names.

Q Are the names of Louis and Marcia Wolfish on each of the signature cards?

A Right. And it seems they are in trust for their daughters and their sons.

Q And 17-B, what kind of account is that?

A It's a joint account in the name of Marcia Wolfish and Louis Wolfish.

Q When you say it's a joint account, what does that mean?

A That means either party could deposit and withdraw.

Q That means either Marcia Wolfish or Louis Wolfish could withdraw, and the survivor of the two?

A Two.

MR. SCHATTEN: At this time I want to read to the jury from Government's Exhibit 16. It's on the back of a piece of paper which says "Special Dimes Services," and it appears to be torn off. It is typewritten. It

says, "Kindly deposit $22,560.54 into each of the eight enclosed new accounts."

Then it has --

Q Is that your stamp, the February 25, 1972 178 stamp?

A That is my teller stamp.

Q What did you do with the cards after you got them in?

A Typed up the passbooks, and I processed the transaction through the machine.

MR. SCHATTEN: May I have each of these marked as Government Exhibits?

XXX (Government's Exhibits Nos. 19-A through -H were marked for identification.)

Q I show you what has been marked Government Exhibits 19-A through -H, and I ask you can you identify these documents, namely, the passbooks.

A These are the passbooks that I opened up according to the instructions for the accounts.

Q Do each of those passbooks correspond to each of the signature cards that are referred to in the series entitled Government's Exhibit 17?

A Yes.

Q And you prepared one bank book for each signature

MR. SCHATTEN: At this time, your Honor, I would offer the passbooks, Government's Exhibits 19-A through 19-H, in evidence.

THE COURT: What is your position, Mr. Rosen?

MR. ROSEN: I will object on the grounds that no foundation has been laid connecting this to the defendant.

I haven't heard the witness say anything about Mr. Wolfish, and I object.

THE COURT: Received subject to connection.

(Government's Exhibits 19-A through 19-H received in evidence.)

xx

MR. SCHATTEN: With the Court's permission, can I pass out at this time the passbooks together with the document which was included with the passbooks, and the signature cards, and once again Government's Exhibit 9 to the jury?

THE COURT: What is the document that was included with the passbook?

MR. SCHATTEN: It is a document marked Government's Exhibit 16.

THE COURT: And what else?

MR. SCHATTEN: The passbooks, the signature card, and the check.

THE COURT: All right.

A Not that I remember.

Q Was it your function when you were at the Dime Savings Bank to open up new accounts?

A Yes, it was.

Q Did you ever meet a lady by the name of Marcia Wolfish?

A Not that I remember.

Q Did you ever speak to a lady by the name of Marcia Wolfish?

A Not that I remember.

Q Did you ever speak to a man by the name of Louis Wolf?

A Not that I remember.

Q Do you know of your own personal knowledge who it was that typed this note on Exhibit 16?

A No, I don't.

Q Now, as I asked you before, you sent all these cards out, which are 17, Exhibit 17. Am I right those eight cards, you mailed them out?

A Right.

Q And you were asked to send them, weren't you?

A That's what it looks like.

Q It looks like that?

A Yes.

Q Who asked you to send them?

A I don't know.

Q Well, to whom did you send them?

A It seems like they were sent out because --

Q No, no.

A I don't have the previous letter in front of me.

Q Would your bank have it?

A Possibly. They would keep it on their record. I haven't seen it previously.

Q Did the Government ask you for it?

A No.

Q Have you ever sat with Mr. Schatten before and talked about what your testimony was going to be?

A Yes, we discussed it.

Q When was the last time you spoke to Mr. Schatten, or any other prosecutor or Government agent?

A I think it was January 2nd.

Q Of this year?

A Of this year.

MR. SCHATTEN: You spoke to me this morning as well.

THE WITNESS: And this morning as well.

Q And did the Government ever ask you to show them what you might have received that precipitated your

sending these cards out?

A No.

Q Did they ask you to bring a file from the bank?

A No, I wouldn't keep it. I wouldn't have it.

Q Who has the file?

A If it is on record the bank has it.

Q I show you all these signature cards which are in the 17 series. Do you know of your own personal knowledge who signed the cards?

A Do I know the signature? No, I don't.

Q How long were you a new account opening teller?

A I would say I worked for the bank three years so probably about two years.

Q Would you say you have opened lots of accounts in that time?

A Yes, I have.

Q Do you open accounts only by mail?

A No, in person also.

Q In other words, I could come into your bank and say here is $50, open an account?

A Right.

Q And I say that I am John Jones, and I want you to open an account in my name, is that correct?

A Right.

Q And this little note, which is 16, actually requests you to break this check up into these eight accounts?

A Right.

Q Is that right?

A Right.

Q And this was all done through the mail?

A Right.

Q Didn't you have to compare something to something before you opened this account?

A No, because the account was being opened by check which was going to go through clearance first, and the only thing that they wouldn't -- when you are making a deposit, a deposit is going through that person's account. Obviously, someone is not going to deposit $100,000 into somebody else's book.

Q Right.

Now, didn't you look at the back of the check to see who negotiated the check?

A Right. And her name was on the check.

Q Marcia Wolfish's name was on the check?

A Right. But her name is on the account.

Q Okay, and that is enough for you to open the account?

A Right.

Q So it was a fact that Marcia Wolfish appears on the back of Government's Exhibit 9, which is the check, and the fact that Marcia Wolfish appears on all of these signature cards, enabled you to open the account?

A Right.

Q If the name Louis Wolfish alone was on these signature cards, could you have opened the account?

A I would have to have an okay from my supervisor or whatever.

Q So you wouldn't need --

MR. SCHATTEN: Could I have that testimony?

THE COURT: Read it back.

(Answer read.)

Q So you wouldn't need that okay because these signatures to your eye matched, am I correct?

A Right.

Q Let's say my name was John Jones and I had $50, could I open a joint account with Mr. Schatten? This is hypothetical.

A Yes.

Q And if I wrote the name Michael Rosen, which was mine, to be a joint account with Steven Schatten, what would you do? Would you open up a book that looked like this?

A Yes. If that is the type you wanted.

Q Right. And would Mr. Schatten have to know about it?

A We would need his signature, naturally.

Q If I signed his signature, we have to know about it?

A No.

Q And he could have an account with $50 in his name, right?

A Right.

MR. ROSEN: No further questions.

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q You have already testified that these documents, namely, Government's Exhibit 9 and 17 series, and Government's Exhibit 16, the piece of paper, they came into your office through the mail, is that right?

A Yes.

Q You never saw either Marcia Wolfish or Louis Wolfish, isn't that right?

A Not that I know of, no.

MR. SCHATTEN: I have no further questions, your Honor.

THE COURT: Nothing further?

MR. ROSEN: Nothing further.

1/7/75
PM 1b

CROSS-EXAMINATION

BY MR. ROSEN:

Q You are a postal inspector?

A No, I am the assistant postmaster at Spring Valley.

Q Okay.

That's higher than a postal inspector, is that right?

A No.

Q You testified to this jury that those cards indicate that somebody living at the address asked that mail be forwarded?

A That's right.

Q And that's not necessarily true, is it?

A Certainly.

Well, we received this request. I don't know who presented the request, but we received it.

Q I could have done it couldn't I?

A That's right.

MR. ROSEN: Nothing further.

THE COURT: Any redirect? Any further questions?

MR. SCHATTEN: Yes, your Honor. I do need the cards.

THE COURT: All right.

word that Mr. Wolfish had requested that mail be forwarded to another address?

A Yes.

Q And what was that other address?

A 25-10 30th Road, Astoria, Queens.

Q I have shown you what is marked as Government's Exhibit 21-C and ask you what that is.

A This is a copy of a page of the carrier's route book. The carriers enter any removals that they have in their books.

Q What is a removal?

A When a patron or a customer moves, he submits a removal card. The carrier then enters it in this book and he forwards the mail.

Q Are these documents prepared by the carrier in the ordinary course of the Postal Service's business?

A This document is, yes.

Q Are these documents maintained by the United States Postal Service in Monsey in the regular course of its business?

A Yes.

MR. SCHATTEN: I would offer Government's Exhibit 21-C.

VOIR DIRE EXAMINATION

7 jbmch Monahan-direct

to maintain such records?

THE WITNESS: I believe at that time it was for two years.

THE COURT: So it was the regular course of business to maintain these records?

THE WITNESS: Yes, sir.

THE COURT: At your post office?

THE WITNESS: Yes, sir.

THE COURT: Received, subject to connection.

xxx (Government's Exhibit No. 21-C for identification was received in evidence.)

CONTINUED DIRECT EXAMINATION

BY MR. SCHATTEN:

Q I direct your attention to the first entry on this document, entitled 21-C in evidence, and you tell the jury what it reads, please.

A It reads, "The effective date if 7/7/70."

Q That is July 7, 1970?

A Yes.

The name is Wolfish. The street address is 92 West Maple.

The new address is 25-10 30th Road, Astoria, Queens 11102.

MR. SCHATTEN: I have no further questions of

3 mdmch

to testify that in the mail he received a letter from somebody whose signature at the bottom was Marcia Wolfish, asking him to translate nine Hebrew death certificates.

In the ordinary course of business he translated those nine Hebrew death certificates, and brought them to the -- brought his translations and the death certificates to the Minstry of the Interior in Jerusalem, wherein his notarization was approved, and then they were taken to the American consulate wherein the American consulate, in effect, approves the signature of the Ministry of the Interior.

He then got the whole package together, with a red ribbon, sent all nine death certificates together with their translations, back to New York.

That's the sum and substance.

THE COURT: Sent them back to New York to --?

MR. SCHATTEN: Mrs. Marcia Wolfish at the Astoria address we have been hearing so much about.

DEFENDANT WOLFISH: May I say something?

THE COURT: Just counsel. You may talk to him, if you want to.

MR. ROSEN: May I converse with him?

THE COURT: Yes.

(Pause)

to the jury Government's Exhibit 22-A in evidence.

(Mr. Schatten read to the jury from Government's Exhibit 22-A in evidence.)

BY MR. SCHATTEN:

Q After you got the nine copies of the death certificate, including the one attached to Government's Exhibit 1, what if anything did you do with them?

A I prepared the translations as requested.

Q The second page of Government's Exhibit 1, is that the translation you prepared?

A Yes, from Hebrew to English.

Q And this is a true and correct translation of the death certificate which is the third page?

A Yes.

MR. SCHATTEN: Can I read that to the jury as well, your Honor?

THE COURT: Yes. Reading now from page --

MR. SCHATTEN: Page 2 of Government's Exhibit 1.

(Mr. Schatten read to the jury from Government's Exhibit 1 in evidence.)

Q By the way, what does 15-11-1931 mean in English?

A This would be 131.

Q I'm sorry, what is the date of the birth that you were translating?

A Here it is, the 15th of November, 1931. It would be the month, the second.

Q That was your translation, was it not?

A Yes.

Q What if anything did you do after you prepared your translations of this document?

A Then I filled out this certification of translation form in both languages, Hebrew and English, bound the three pages together by this red ribbon, and put this red seal on it, and then impressed my notary seal. Here I put a stamp and signed it both in Hebrew and in English.

Q What if anything was done by you after you completed that process? I take it you completed the same process with respect to each of the death certificates?

A Exactly. In order to get the certification of the United States Consulate in Jerusalem we had first to have my signature approved by somebody in the Ministry of Justice in Jerusalem. The nine copies were brought there either by myself or by somebody else in my office, and they put their seal on here.

On top of it is the seal of the Ministry of Justice.

Q When you refer to the seal of the Ministry of Justice, is that that seal on the back of the document?

A Exactly.

THE COURT: What page?

MR. SCHATTEN: It is page 1 on the back side, your Honor.

May I read from the exhibit?

THE COURT: Yes.

(Mr. Schatten read to the jury from Government's Exhibit 1 in evidence.)

Q And this was done with each of the nine, is that correct?

A That's right.

Q What happened after the nine documents were certified by the Ministry of Justice?

A Later, these nine copies were brought to the office of Mr. John Mallon, the Consul of the United States of America, and he on his part signed and certified the signature of the gentleman from the Ministry of Justice.

Q That is Mr. Havil, is that right?

A That's right, Isaac Havil.

Q I want you to look at what has been marked for identification as Government's Exhibit 22-C. Can you tell when those documents were brought to Mr. Mallon at the United States Consul's office in Jerusalem?

A On the 10th of September, 1971. This goes like

A That is correct. Of course that is my signature.

MR. SCHATTEN: I have no further questions of the witness.

THE COURT: You were just reading from Exhibit 24 in evidence?

MR. SCHATTEN: That's right.

THE COURT: Mr. Rosen.

CROSS EXAMINATION

BY MR. ROSEN:

MR. ROSEN: Mr. Wolfish, stand up, please.

(The defendant stood.)

Q Mr. Mack, did you ever see this man before?

A No.

Q Did you ever speak to him?

A No. Only I -- it seems to me I saw the face of the gentleman in a cutting from a paper but I've never seen the gentleman --

Q You have never talked to him before?

A Never in my life.

Q Did he ever tell you to do anything?

A No.

Q Did you ever speak to a Mrs. Marcia Wolfish?

A No.

Q You wouldn't recognize her if she was sitting

1190

(In open court; jury not present)

THE COURT: Before we bring the jury in, let's take up this question Mr. Rosen has raised.

He offers from 3528 the last five lines on Page 1.

MR. ROSEN: To the end of the sentence on the next page.

THE COURT: All right. Which takes it down to the third line on Page 2.

Now, past recollection recorded would represent, in the sense in which he proposes to use it here, affirmative evidence which undertakes to establish some point, some fact, through the use of the document, recorded document or paper, which point or fact the witness is unable to recall while testifying in Court.

MR. ROSEN: Yes, sir.

THE COURT: Here the witness has indicated he cannot recall whether or not he told the authorities, police authorities, that Mrs. Wolfish sent him a personal check for his charges or fee.

The document here, that portion of it which you offer as past recollection recorded, similarly simply indicates that he didn't recall at the time he spoke to the police officers. The words, as I read them, are:

"In the beginning of October 1971 I received an envelope addressed to me by Mr. Wolfish in which she sent me a personal check for the amount, I want to correct, I cannot remember if it was a personal check," et cetera.

The same thing here that he says on the stand, which means it is a prior consistent statement, and as such --

First, you are not offering it as a prior consistent statement?

MR. ROSNER: No.

THE COURT: But I fail to see how you can use it as past recollection recorded unless he is going to be able to say here, disregarding the fact that the statement was made apparently about two years after the occurrence itself, under the liberal interpretation you can say, well, if he says he remembers, that is perhaps close enough, but all he is going to wind up saying if you get these five lines or so in is the same thing he has testified to here.

MR. ROSEN: If your Honor would permit me just one minute, I think it's critical at this stage of the proceedings to have in the record at least, even if it was a later corrected, or almost immediately corrected statement, my question to him was,"did you ever tell

anybody that Mrs. Wolfish sent you a personal check?"

THE COURT: He says here, "I don't remember"; right?

MR. ROSEN: He did tell them; then he says he was not sure.

THE COURT: Here is what he says in his written statement:

" I received an envelope addressed to me by Mrs. Wolfish in which she sent me a personal check for the amount" -- then he says, "I want to correct. I cannot remember if it was a personal check."

That's what he said right here.

MR. ROSEN: I am not sure he testified that at first he thought it might have been a personal check and then wasn't sure.

THE COURT: So it adds up to "I am not sure. I don't recall."

MR. ROSEN: I think it's pretty important in the context of the proof submitted.

THE COURT: I don't have to address myself to its importance; that's for you to do. I have to hear from you the rationale or the theory upon which you wish me to rule on it.

MR. ROSEN: I respectfully submit this is a

122a

BY MR. ROSEN:

Q Did you tell Inspector Slavinski on August 9, 1973, Mr. Mack, that you received a check from Marcia Wolfish drawn on the First National Bank for $50, dated September 30, 1971?

A If I mentioned the name of the bank to him, I had it out from the receipt. I couldn't have told him something from my memory. And this was a check made out in my name; I remember it.

Q I show you what has already been marked Government Exhibit 22-B, which is the envelope, I believe, that --

A Mr. Rosen, may I please --

Q Yes, sir.

A I wouldn't say for certain that this check, as far as my memory goes, that the check was signed by Marcia Wolfish, but this was a check sent to me in response to the bill which I have sent, and this I brought to my bank.

Q Mr. Mack, this envelope that had what I will call the Paul Newman letter, the letter that asked you to make the investigation, did that come with stamps attached?

A Definitely. You can see. I cut them off myself.

Q Did you do that because that is your hobby or --

A It's a hobby. I collect stamps, yes, sir.

Q Who was the addressee?

A Yes.

Q Who was the addressee?

A Marcia Wolfish.

Q On that given day -- was it September 15th?

A Yes, sir.

Q Did you go up to the Horowitz apartment and ring the doorbell?

A Yes.

Q You remember it very well?

A No.

Q How did it come to pass that you told the jury about it? How does it come to pass that you just told the jury?

MR. SCHATTEN: I object to it.

A I didn't say to the jury --

THE COURT: Just a moment.

MR. SCHATTEN: I object to the question.

THE COURT: To form, sustained.

Q Tell us what you remember about the day that appears on Exhibit 25, September 15, 1971.

Tell us about that date?

A I can only tell you by this refreshing my memory that I delivered this piece to the Horowitz apartment.

Q Now -- excuse me.

If you are not finished, I'm sorry to interrupt.

A No, that's all right. Go ahead.

Q But for that piece of paper in front of you, you have no independent recollection?

A No, of course not, because they received many accountable pieces of mail.

Q Many what, sir?

A Accountable pieces of mail.

Q What is that?

A It could be a registered, certified or insured, whatever.

Q Now, it is your testimony then that you are permitted to have someone else at an address sign for a registered letter?

A Yes.

I should qualify this piece. If someone else signs it it should have been signed where it says, "By" and the name of the addressee on the first line.

Q So, would it not be fair and honest to say that, well, let's use the words that there is something improper or incomplete about this piece of paper?

A I would say this: That if I thought it was improper, I wouldn't have accepted the signature,knowing

mdrf 3b am 1

(In open court, jury present.)

THE COURT: Call your next witness.

MR. SCHATTEN: The Government calls Mr. Israel Horowitz.

THE WITNESS: I don't swear.

I S R A E L H O R O W I T Z, having affirmed, was duly examined and testified as follows:

THE COURT: All right, Mr. Schatten.

DIRECT EXAMINATION

BY MR. SCHATTEN:

Q Where do you live, Mr. Horowitz?

A 2510 30th Road, Astoria.

Q How long have you lived at 2510 30th Road, Astoria?

A Approximately 15 years.

Q With whom do you live there?

A My family.

Q Your wife, and how many children do you have?

A Four.

Q And you were living there throughout 1970, 1971?

A 15 years includes that.

Q Do you know Louis Wolfish?

A He is my brother-in-law.

MR. ROSEN: I will concede he is in court.

MR. SCHATTEN: And the witness knows him.

MR. ROSEN: He says he is his brother-in-law.

Q Did there come a time you authorized Louis Wolfish to receive mail at your 2510 30th Road, Astoria address?

MR. ROSEN: I would like to ask the Court to direct the U.S. Attorney not to ask questions not leading. I think a little background is necessary.

THE COURT: I heard the application, Mr. Rosen. I will allow that question, and then I think you should make your questions non-leading.

MR. SCHATTEN: Repeat the question, Mr. Reporter.

(Question read.)

A That question cannot be answered either affirmative or negative, because as I spoke before the grand jury my mother-in-law --

THE COURT: All right, just --

MR. ROSEN: I move to strike.

THE COURT: Strike any reference to the grand jury. The jury will disregard that.

MR. SCHATTEN: Perhaps I can change my question.

THE COURT: Please do.

Q To your knowledge did Mr. Louis Wolfish ever come to pick up mail addressed to the Wolfishes at your address?

A Yes.

Q Other than Louis Wolfish did anyone else to your

mdrf 3 Horowitz-direct

knowledge ever come to pick up mail addressed to the Wolfishes at your address?

A No.

Q Your answer is no?

A No.

But I have to explain that.

Q Thank you.

A It can't be a definite negative. I have to explain my no.

THE COURT: Try another way around the same question. Perhaps he can answer that question. Reframe your question.

Q Did anyone else other than Louis Wolfish have access to Mr. Wolfish's mail at your apartment?

A Yes.

Q Did anyone in your household open Louis Wolfish's mail or any mail addressed to Louis Wolfish?

MR. ROSEN: Your Honor, I am going to object. I think to answer that question is impossible.

How would he know if anyone opened it. To his knowledge, I wouldn't object to that question.

Q To your knowledge?

THE COURT: To your knowledge, sir.

A I would say no, but again with an explanation.

Q During the three-year period -- I am sorry, do you know where Louis Wolfish was living prior to August of 1973?

A He was living in Israel.

Q And do you know for how long a period?

A Not offhand, I don't recall.

Q Approximately?

A I really don't know. Three years, four years, two years.

Q And how often would you see Louis Wolfish during that three-year period?

A He used to come in periodically.

Q And on those occasions would he pick up mail addressed to the Wolfishes at your apartment?

A Yes, sir.

Q To your knowledge, did Mr. Wolfish or the Wolfishes receive mail at your address that was being forwarded to them from another address?

A I really don't recall. It could be quite possible yes.

Q I am going to show you the third page of Government's Exhibit 1. Did you have anything to do with the preparation of this document?

A Could you tell me the date of this document?

THE COURT: Your affirmation is still in effect. You may inquire.

CROSS-EXAMINATION

BY MR. ROSEN:

Q Mr. Horowitz, we have met before, have we not?

A Yes, we did.

Q As a matter of fact, we met in my office, didn't we?

A That's correct.

Q Would you tell his Honor and the jury what your occupation is?

A I am a rabbi.

Q I am sorry. I don't hear you.

A I am a rabbi of Congregation Miskikan Israel in Astoria, Long Island.

Q And you are married to Rabbi Wolfish's sister?

A Correct.

Q Let me ask you about your mail box in Astoria.

Your mail box in Astoria had the name "Wolfish" on it before Rabbi Wolfish left for Israel; is that correct?

A That's correct.

Q And isn't it a fact that it was because your mother-in-law was either at your house or deathly ill and

the mail was coming to her under the name of Wolfish?

A Correct. She had terminal cancer and she stood there for over a year.

Q So, mail addressed to a Wolfish was going to your address at your home in Astoria because of that reason?

A Correct.

Q Rabbi, I would like to ask you a few questions concerning your prior testimony before a grand jury.

You were before the grand jury in this case, were you not?

A Yes, I was.

Q And were you not advised of your Constitutional rights that any questions or any answers you might give might tend to incriminate you?

A Correct.

Q And were you not interrogated by a Mr. McDermott before the grand jury?

A Yes, I was.

Q And did Mr.McDermott ask you whether you were involved in an insurance fraud pertaining to policies on the life of Louis Wolfish?

A Yes.

Q Rabbi Horowitz, were you ever. in words or substance, threatened with prosecution if you did not

cooperate with the Government in this case?

A Yes, I was.

Q Now, Rabbi, did you ever say, orally or in writing, that the only person who had access to Louis Wolfish's mail at your house was Louis Wolfish?

THE COURT: Well now, just a moment.

Before you can put that question, I will ask you to fix a time and the circumstances which enable the witness to know when it is that he may or may not have made such a statement.

MR. ROSEN: Fine, Judge.

Q By the way, Rabbi, when was the last time you and I spoke?

A I think it was -- I really don't recall.

The first initial time that I met you at your office.

Q Subsequent to that time --

A Yes. I met you again when we had to post bond.

Q But after the initial conferences between you and I, have we ever talked about your testimony that you are giving here today?

A Absolutely not.

Q Now, do you recall the day of June 18, 1973?

A I really don't know.

Q Maybe I can refresh your recollection.

Were you in the presence of Postal Inspector Slavinski and Assistant U. S. Attorney Steven A. Schatten on that day?

A Yes, I did. Yes, I was.

Q Do you see those two gentlemen in court?

A Yes.

Q They are sitting to my left; is that correct?

A That's correct.

Q Did you give them a statement on that day that the only person who had access to Louis Wolfish's mail or any Wolfish mail at your home would have been Louis Wolfish?

A I take objection to that because when that statement was made, and I fought with Mr. Schatten over the wording, and I said I do not agree to this statement, and he started to bandy about. He said, "Let's stop being pedantic. Let's not question -- let's not argue over semantics."

I said it is. It's not a question of semantics. I said, "I will not sign such a statement because I don't feel this is correct."

Q Rabbi, would it be fair and honest to say that you had access to the Wolfish mail -- either Mr. Wolfish

or Mrs. Wolfish -- at your house?

A Yes, that's correct.

MR. ROSEN: Mr. Schatten, would you give me, please, the exhibit where the Louis Wolfish signature is?

Q Rabbi, I show you what has been marked Government's Exhibit 25 in evidence.

Have you ever seen this piece of paper before?

A I really don't know.

MR. ROSEN: Your Honor, I would renew my request that --

THE COURT: Don't make it --

MR. ROSEN: I am not going to make it in front of the jury. I am just renewing the request that I made when the jury was out.

THE COURT: I have it under consideration. We will proceed.

Q Rabbi, is it not a fact that on September 15, 1971 you signed Louis Wolfish's name to this piece of paper?

THE COURT: Just a moment now.

You have a right under the Fifth Amendment, sir, to refuse to answer any question which may tend to incriminate you or which could supply evidence by which you can be convicted of a criminal offense.

Do you understand?

THE WITNESS: Yes.

THE COURT: Proceed.

THE WITNESS: Under this, what you just told me, your Honor, under these circumstances and I would rather not answer at all.

If you tell me this, I have -- because I am in doubt. I don't know.

Why should I say anything, then?

Q Rabbi, I show you what has been marked Government's Exhibit 22 and ask you whether you recognize the paper that that letter is written on.

A No, I don't.

Q Does the paper bear any printing on it?

A My home address on there.

Q Isn't that your stationery?

A It is not mine --

MR. ROSEN: Judge, I --

MR. SCHATTEN: Can he answer the question?

THE COURT: Well, let me ask you, sir --

MR. SCHATTEN: You shouldn't keep interrupting him.

THE COURT: There has been no objection by the prosecutor, but I would ask you how we are within the

limits of direct on your cross?

MR. ROSEN: How we are on the limits of direct?

THE COURT: Yes.

Come up to the bench.

(At the side bar)

MR. ROSEN: Your Honor, most respectfully, the prosecutor asked Rabbi Horowitz about access to mail and about mail at his home. I intend to show that the cirtical letter requesting information regarding death certificates was not only done on Mr. Horowitz' stationery, but on his typewriter. I think if there is anything that would go to the heart of the defense in this case, this is it.

He brought him here --

THE COURT: That may well be, but,you see, my concern is that you have every opportunity to inquire within the limits of whatever was elicited on direct, as distinguished from whatever you may wish to do as a part of your own case, when you get up to that point.

Now, as you know, it may well be that you can develop points here on cross which have an affirmative effect in terms of your defense, but I have to know that there is at least a relationship to what has been brought out on direct.

MR. ROSEN: The Government put that piece of paper in evidence. I have a right to ask whether it's his document.

THE COURT: Yes, I see. All right.

(In open court)

MR. SCHATTEN: May I just say something for the record?

THE COURT: Proceed.

MR. ROSEN: I am not sure I remember the last question.

THE COURT: Read it back, please.

(Record read)

A It is my home address on there.

THE COURT: Before you go any further now, I warn you again that you have a right under the Fifth Amendment to refuse to answer any questions which may tend to incriminate you or which would supply evidence by which you can be convicted of a criminal offense.

Do you understand that, sir?

THE WITNESS: Yes, I do.

A I don't want to answer.

Q Rabbi, do you --

MR. SCHATTEN: May I approach the side bar, please?

THE COURT: Yes.

(At the side bar)

MR. SCHATTEN: Just so that the record is clear on this, we have, except for the grand jury situation where we did advise Mr. Horowitz of his Constitutional rights at the beginning of that portion, as a result of our investigation there is no present reason to believe that he is anything like a target of this investigation, and I just want to indicate that on the record. If that should present a problem in any way, I think we can endeavor to confer with my superiors and get a form of immunity in a very brief way, if that is what the Court would require in the situation.

I do want to indicate that for the record.

THE COURT: All right.

Well, you have it.

MR. ROSEN: I don't understand it, but okay, yes.

(In open court)

BY MR. ROSEN:

Q Rabbi, do you have stationery such as this which is before you with your name on the top?

A Yes.

Q And could you tell his Honor and the jury whether the stationery that you have in front of you has your name

on top ripped off or taken off?

A Yes, because my name --my stationery has my name on top of it. This does not have my name on top.

Q Now, Rabbi, did there come a time in 1973, most particularly March 30, 1973, that you told anyone that Rabbi Wolfish denied being connected with any plot to defraud any insurance company?

A Yes, I did.

Q That's when you were questioned about it, isn't that correct?

A That is correct.

Q Did you ever open any of Rabbi Wolfish's mail that came to your house?

A I really don't remember. Usually not.

Q Do you specifically recall any mail from an insurance company?

A This question I was asked by the grand jury. I don't recall, no.

Q Did you ever get any --

MR. ROSEN: Excuse me, Inspector.

Q -- what we call junk mail?

A Loads of it.

Q That's third and fourth-class stuff?

A Yes.

Q What did you do with that?

A I guess I filed it in the circular file, usually.

Q In other words, you threw it away?

A Correct.

Q In other words, you had complete control over the mail that came in, isn't that correct?

A Well, I or members of my family.

Q Rabbi, did there ever come a time when agents of the United States Government took a typewriter out of your home?

A Well, actually, they wanted to take --

MR. SCHATTEN: I object. I object.

A They wanted to take --

MR. SCHATTEN: I object.

THE COURT: Just a moment. Let me --

Yes, all right, come up.

(At the side bar)

MR. SCHATTEN: This is well beyond the scope of any kind of direct examination; no relationship at all to anything on direct examination. It's clearly improper.

MR. ROSEN: I think, Judge, the Government's exhibit -- I lost the exhibit number -- 22, the Government has knowledge that that was typed on Rabbi Horowitz' typewriter.

MR. SCHATTEN: It's not true. I have nothing --

THE COURT: Just a moment.

MR. ROSEN: I t is true.

MR. SCHATTEN: Well, I'm sorry --

THE COURT: We have to consider this in terms of what is before the jury.

Now, it strikes me that you are beyond the limits of direct and that you are into defense as such.

MR. ROSEN: I will abide by your Honor's ruling. I respectfully except.

THE COURT: All right.

MR. SCHATTEN: Just so the record is clear, of course we didn't introduce Government's Exhibit 22 through this witness.

MR. ROSEN: What difference does it make?

THE COURT: All right.

(In open court)

THE COURT: The objection is sustained.

Q Did you ever tell the grand jury that for two years after Rabbi Wolfish went to Israel he was not located in any permanent apartment?

A Yes.

MR. ROSEN: I have nothing further of this witness.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q Mr. Horowitz, did you testify in the grand jury as follows:

"Q So it is your belief that he" --

MR. ROSEN: Excuse me, your Honor. May I object?

THE COURT: Just a moment now.

Q Did you ever tell --

THE COURT: Just a moment.

What is your objection?

MR. ROSEN: I would like him to ask him whether he testified, instead of telling him or reading it. If he wants to rehabilitate him, this is not the way.

THE COURT: What is your stand?

MR. SCHATTEN: I haven't been able to complete the question.

THE COURT: Well, complete the question and we'll see where we are.

Fix the time and place.

Q Did you ever tell the grand jury on March 30, 1973, Mr. Wolfish told the Post Office in Monsey to forward mail to your address?

A I don't recall.

Q Let me show you this document and ask you if it refreshes your recollection.

A I still --

"It's your belief that he told the Post Office in Monsey to forward the mail to your address?

"Answer" --

I don't understand this.

THE COURT: Strike it out and the jury will disregard it.

Let's go back to the beginning.

The question is whether or not you made a certain statement to the grand jury on the date in question. Counsel has merely shown you that document so that you can read it to yourself in order to be able to answer the question.

I want you to read it to yourself, and then you can see whether you recall whether you made that statement or not.

MR. ROSEN: I would like to object. It has no bearing on the cross-examination and it's not a prior inconsistent statement.

MR. SCHATTEN: It certainly does.

THE COURT: May I hear one at a time?

Your objection is --

MR. ROSEN: No bearing on the cross and it is not a prior inconsistent statement.

If he wishes to impeach his own witness, I say it's improper.

MR. SCHATTEN: May I be heard?

THE COURT: Yes.

MR. SCHATTEN: Our position is that we can introduce such evidence. We are dealing with a hostile witness.

THE COURT: You haven't asked for him to be declared.

MR. SCHATTEN: We would ask that he be declared as a hostile witness for obvious reasons, including his relationship to his brother-in-law, as well as his testimony on cross-examination.

MR. ROSEN: Most respectfully, the United States Attorney put this man on the stand as his witness, vouching for his veracity --

THE COURT: I accept the request that he be declared a hostile witness and so declare him.

Proceed.

Q Didn't you tell the grand jury that Mr. Wolfish had told you that he told the Post Office in Monsey to

forward the mail to your address?

A If I told the grand jury? I don't recall it and if it says I did, then that's what it was.

Q Didn't you also tell the grand jury that you received letters addressed to Mr. Wolfish that were forwarded from his address in Monsey?

THE COURT: Just a moment, now.

If you are going to inquire about any statements made before the grand jury, are you giving him the exact language from a document and, if so, read it exactly and then put the question and ask him does he remember the occasion, does he remember the answer.

MR. ROSEN: Right.

Q Do you recall being before the grand jury and having been asked the following question:

"Q These letters you received addressed to Mr. Wolfish, were they addressed to your address or were they addressed to Monsey?"

Do you recall giving the following answer:

"A Some were addressed to Monsey and forwarded to me, some were addressed, as I said, to Wolfish and sent."

THE COURT: The only question before you right now is do you recall that question and do you recall giving that answer?

A I don't recall.

Q I show you this document and ask you if it refreshes your recollection that you gave that answer.

THE WITNESS: I said, your Honor, when was this --

THE COURT: Just one step at a time.

Now, he has shown you a document and asked you very specifically to read it and see if it refreshes your recollection. After you read it, tell us whether it does or it does not.

A It's quite possible I said this.

Q Does that refresh your recollection that you said it?

A I don't recall because it happened over --

THE COURT: Again, does it refresh your recollection that you said it? Yes or no.

THE WITNESS: I really don't recall.

THE COURT: He doesn't recall whether it refreshes his recollection.

Go ahead.

Q Do you recall being asked the following question in the March 30, 1973 grand jury and answering in the following way:

"Q Did you ever have a conversation with Mr. Wolfish

about holding mail for him?"

And giving an answer:

"A Yes. He said, 'Hold the mail for me.' I asked him why he didn't want the mail forwarded, because when he went, he emigrated there, and he was going to an absorption center."

Do you remember being asked that question in the grand jury and giving that answer?

THE COURT: Just a moment.

MR. ROSEN: Objection, your Honor. I don't think it's proper to go through the witness' entire grand jury testimony. There has been no showing that it's necessary and it's an improper way to proceed.

THE COURT: Overruled.

MR. ROSEN: I except.

THE COURT: Do you recall the question?

THE WITNESS: Yes.

THE COURT: The question is, "Do you remember being asked that question and giving that answer?"

A I don't remember.

Q I show you the document and ask you if it refreshes your recollection that you were asked that question and gave that anser.

A Quite possible. I don't remember.

147a

Q I want you to look at the first page. I want you to read the top of the first page. You were in the grand jury on March 30, 1973, isn't that right?

A That's almost two years ago, Mr. Schatten.

Q I am asking you, do you recall answering -- were you in the grand jury on March 30, 1973?

A Yes, I was. Yes.

Q You were?

A Yes.

Q Is that the transcript of your grand jury --

A I imagine. If they say it is, I imagine it is.

Q Does that refresh your recollection that you testified in the grand jury:

"Q Did you ever have a conversation with Mr. Wolfish about holding mail for him?

"A Yes. He said, 'Hold the mail for me.' I asked him why he didn't want the mail forwarded, because when he went, he emigrated there and he was going to an absorption center."

A I don't recall. I said it probably was, but I said I don't recall. It was two years ago.

Q Do you recall being in the grand jury and being asked the following question and giving the following answer:

"Q So the way he got his mail was by physically picking it up from your home?

"A Yes, when he came, yes."

Do you recall giving that answer?

MR. ROSEN: Objection, your Honor. Same objection.

THE COURT: Overruled.

Q Your answer is?

A Could be.

Q I show you this and I ask you if it refreshes your recollection as to whether --

A I said this happened two years ago. It's hard for me to remember.

Q Why don't you look at it and see if it refreshes your recollection?

(Pause)

A I don't remember.

Q Does that refresh your recollection?

A No.

Q Did you also get asked in the grand jury the following question and did you give the following answer:

"Q Never gave it to anyone else to forward to him?

"A No."

A I don't remember that, either.

Q I show you your grand jury testimony and ask you if it refreshes your recollection.

A No.

Q You never said that? Right?

A I don't remember, Mr. Schatten.

Q Do you remember being asked in the grand jury the following question and did you give the following answer:

"Q Did all the mail sent to your address in the name of Mr. Wolfish eventually get to Mr. Wolfish?

"A Yes, it did."

Do you remember giving that answer in the grand jury?

A I'll say, Mr. Schatten, this happened two years ago. I don't remember.

MR. ROSEN: Objection, your Honor. I didn't get a chance to object and I want to object.

THE COURT: What's the answer?

THE WITNESS: I don't remember. It happened two years ago. I don't remember what the answers were.

Q I show you the grand jury testimony --

A It's not possible --

Q I ask you if it refreshes your recollection.

A I don't remember.

150a

Q Do you remember being asked the following question in the March 30, 1973 grand jury and giving the following answer --

By the way, you never met me? By the way, you never met me or Mr. -- you never met me prior to March 30, 1973, is that right?

A I don't know exactly the dates. I really wouldn't recall.

Q "Q Do you remember any mail coming to your house from the life insurance, Security Life Insurance Society?"

And do you remember giving the following answer:

"A I'll be very candid. All the mail came to him I didn't look -- just placed on a pile. He came and picked up the mail."

Do you remember being asked that question and giving that answer?

A Yes, it could be.

Q I show you this document and ask you if it refreshes your recollection.

A I don't remember, really.

THE COURT: It doesn't refresh your recollection?

THE WITNESS: Your Honor, all these questions,

I mean really, I don't remember what I ate yesterday.

THE COURT: Just a minute. Let me ask you again: Having just looked at that, does it refresh your recollection?

THE WITNESS: If they say so, probably it was recorded. I don't recall.

THE COURT: No.

You have read it, have you not?

THE WITNESS: I've read it, yes.

THE COURT: Has it had the effect of refreshing your recollection?

THE WITNESS: No.

Q Mr. Horowitz, who is the Assistant United States Attorney questioning you in the grand jury? It wasn't anybody in this courtroom, was it?

A I beg your pardon?

Q It wasn't anybody --

MR. ROSEN: I object. I don't know the relevance of it. They have other agents.

THE COURT: Sustained.

Q Do you know who the Assistant U. S. Attorney questioning you is?

MR. ROSEN: Same objection.

THE COURT: Sustained.

Q Do you remember being asked the following question and giving the following answer:

"Q So you never looked --

"A I never opened any of his letters."

Do you remember being asked that question and giving that answer?

A I don't recall.

Q I show you the grand jury testimony and ask you if it refreshes your recollection.

A Where is this question?

Q "So you never looked" and "I never opened any of his letters."

A I said I don't really -- all these questions, I don't remember.

Q Do you recall being asked the following question and giving the following answer:

"Q I am not saying you opened any.

"A I never looked. Whatever the mail -- be very honest with you; sometime, just going through the letter, if his name was on top so I could, just glancing at it, would have seen what it's from. I never opened any mail. All the mail was placed on a pile, belonged to him."

Do you remember giving that --

A Could be.

MR. ROSEN: I didn't hear the answer.

THE WITNESS: Could be. I don't recall.

Q I wanted to show you this document and --

MR. SCHATTEN: Can we have it marked, your Honor?

MR. ROSEN: It is marked.

THE COURT: It's already identified, is it not?

MR. SCHATTEN: Right. It's 3529.

THE COURT: It's 3529?

Q I show you this question and answer and I ask you if it refreshes your recollection as to that being your testimony.

A Mr. Schatten, I said this happened two years ago. I don't remember. I just absolutely don't remember.

Q Would you read the question, Mr. Horowitz, and read the answer?

Do you deny having been asked that question --

A I didn't deny it.

THE COURT: Just a moment now. Objection sustained.

MR. ROSEN: Objection.

THE COURT: We just want you to read the portion presented to you. Take your time and read it.

Now, the question is, does that refresh your

recollection?

THE WITNESS: I don't remember.

THE COURT: It does not refresh your recollection?

THE WITNESS: No.

Q Mr. Horowitz, I want to show you this document. Do you know what this is?

A You told me that this was the grand jury testimony.

Q Would you look at it?

A Yes?

Q What is it?

A It says here, "Israel Horowitz called as a witness" --"regular jury" -- "having been duly affirmed by the Foreman of the Grand Jury, testified as follows: By Mr. McDermott" --

THE COURT: All right.

Q It's a transcript of your grand jury testimony?

A I said this happened two years ago, Mr. Schatten. I don't remember.

Q Didn't you appear before the grand jury --

A I said I did appear before a grand jury.

Q Just read through it.

THE COURT: All right. We have gone into this far enough.

MR. ROSEN: Objection.

THE COURT: Sustained.

Q Mr. Horowitz, I believe Mr. Rosen on his examination asked you about the statement that was being said by Mr. Wolfish to you when he said he had nothing to do with it.

A Yes.

Q Do you recall that being part of your grand jury testimony? Is that correct?

A I don't. I don't. I said this I recall because --

Q Isn't the question that you were asked, "Did you discuss with him, did you ask him what --" wasn't your answer:

"Yes, I was very annoyed with him. I was very angry -- why, if anything like this, why I was implicated or involved in any way. In fact, he was angry, he said he had nothing to do with it. He got angry with me, why I was angry with him.

"Q And you told him that the authorities were talking to you?

"A That's right."

Wasn't that your testimony before the grand jury?

A Could be.

Q Do you recall being asked in the grand jury, Mr. Horowitz:

"Do you have any reason or any knowledge of any scheme to defraud any insuracne company?"

And giving the answer:

"Absolutely not. The first I ever heard of it, when I came -- I was brought down here in May."

Do you recall being asked that question and giving that answer?

A It's quite possible.

Q Do you have any knowledge whatever of any scheme on your part to defraud any insurance company? Your answer is no?

A That's right.

MR. SCHATTEN: I have no questions.

THE COURT: Recross, redirect, whatever. Reinquire.

RECROSS-EXAMINATION

BY MR. ROSEN:

Q Who is Rebecca Wolfish?

A My mother-in-law.

Q She passed away in Israel, isn't that correct?

A Yes.

Q Did you ever come into possession or see that

Israeli death certificate on Rebecca Wolfish?

A No.

Q Who received that, do you know?

A I haven't the slightest idea.

Q How many times, if any, were you in Israel in 1970, '71 or 1972?

A Well, as I said before, my mother-in-law knew she was --

Q Could you please try -- I don't want to interrupt you, Rabbi, but how many times, to the best of your recollection.

A From '70 to '72, twice.

Q Can you recall the dates?

A Well, that's what I am trying to tell you, Mr. Rosen.

At the time my mother-in-law was terminally ill and she wanted to die in Israel, so we all went along and it was in July of '70.

And then in '72 because the unveiling of the monument took place, so we made another trip then.

Q July of 1970 and when in '72?

A It was the winter; I think around the Christmas time.

Q Novmeber? Approximately November?

A December, I think.

Q Do you have your passport with you, by the way?

A Yes, I do.

Q Would you take a look at that, please, and see if thatwould help pin the dates down a little more accurately?

A December 24, 1972.

MR. ROSEN: Nothing further.

MR. SCHATTEN: At this time I would like to introduce as affirmative evidence Exhibit 3529, the grand jury testimony of Mr. Israel Horowitz.

MR. ROSEN: May I reserve my objection outside the presence of the jury?

THE COURT: Yes.

I'll reserve decision until I get a chance to check DeSisto again.

Have you got a citation on it?

MR. SCHATTEN: 329 F.2d 929.

THE COURT: All right.

Now, any further questions of this witness by either of you?

MR. ROSEN: No, sir.

MR. SCHATTEN: Except insofar as I may need him to introduce this grand jury transcript.

mdrf 10

MR. ROSEN: No, Judge.

MR. SCHATTEN: No, your Honor.

THE COURT: Proceed with the affirmation.

M E N A C H E M S T E R N H A L L, a witness duly affirmed (through interpreter) testified as follows:

DIRECT EXAMINATION

BY MR. SCHATTEN:

Q Mr. Sternhall, what is your position?

A He is the register of births and deaths.

Q Where are you the register of births and deaths?

A In the Interior Office in Jerusalem.

Q How long have you been the register of births and deaths in the Interior Office in Jerusalem?

A For 24 years.

Q What are your duties? What job do you have in the Interior Office in Jerusalem?

A He used to register the death dates and the birth dates.

Q How long have you been registering the birth dates and the death dates in Jerusalem?

A 24 years.

Q I want to show you the third page of Government's Exhibit 1 in evidence. I want you to look at it. Have you

seen a copy of that document before?

A He saw that only in the time of the investigation.

THE COURT: What is the marking on it?

MR. SCHATTEN: Government's Exhibit 1, your Honor, the third page.

Q Did you have occasion to see the original of the document as well -- that is, the same third page that you are now looking at?

A He asked if that is a copy or --

Q Have you seen that particular page that the interpreter is now holding in his hand before?

A He doesn't remember if that is the paper that he saw then.

Q But did you see a copy of that page, in any event?

A Yes, he saw the original of that paper.

Q Looking at that third page, can you tell whether that document is a genuine Hebrew death certificate or a forgery?

A He says that usually he doesn't print --

Q Can you ask the witness to answer the question: Is that a genuine document or is it a forgery, in his opinion?

A It appears like a forged document.

Q Can you explain the reason for your conclusions

as to why you concluded it is a forged document?

A He says that it looks like a forged document because it is printed and not with handwriting, so that is the reason why he thinks that it is a forgery and not the original. He says that whenever he issued a document like this that is original he used to write that in his books, and when he looked in his books he didn't find that, so that is the two reasons that makes him to think that it is not the original and that is a forged document.

Q When you say you had occasion to look in your books, is your testimony that you looked in your books for the death of a Louis Wolfish, is that correct?

A Yes, he did.

Q And did you find the death of any Louis Wolfish so indicated in your books?

A He didn't.

Q I know there is some writing with a pen at the bottom left-hand corner of Exhibit 1. Is that your signature there?

What are the words that are indicated there first?

A He says that is not his signature but it looks like. It looks like very much.

Q But you did not write the signature there, is that correct?

A No, he didn't.

Q Let me show you now what has been marked as Government's Exhibit 31 for identification.

Can you recognize that document?

A Yes, he says it is my document. It is my signature.

Q Is that a document that was prepared by you, a death certificate prepared by you?

A Yes, I did.

Q Can you tell us what that document is?

A It is a death certificate.

Q And whose death certificate is it?

A Wolfish, Bukia Rifka.

MR. ROSEN: I will stipulate that is Rebecca Wolfish. I am not familiar with Hebrew, but if that is the Hebrew of Rebecca -- I don't know. If this witness will say in English it is Rebecca --

MR. SCHATTEN: We will stipulate --

MR. ROSEN: If he says it is Rebecca, fine. I don't the Hebrew name.

THE COURT: Mr. Interpreter, does that word translate into Rebecca in English?

THE INTERPRETER: He says maybe. He is not familiar with the language, so he cannot.

MR. ROSEN: I will withdraw my stipulation then.

1a pm 1 jbrf

AFTERNOON SESSION

2:35 p.m.

(Jury not present.)

THE COURT: Now, let me ask that, from now on, whatever arrangements you have to make, make them during the lunch hour. We took an hour and a half for lunch today and it should have been enough time for getting this done without encroaching on our court time and please see that this is done in the future.

On the 3500 question, I have examined the series of documents identified as 3569 in order to determine whether they have to be turned over to the defendant pursuant to the provisions of 18 United States Code 3500.

Before it can be said that 3500 applies, it must first appear that there are statements made by the witness who has just testified and, additionally, that the statements relate to the subject matter of the witness' direct testimony.

I find here that some of the documents submitted to the Court cannot be said to be statements made by the witness, Mr. Gatti and, further and more importantly, I find that the material submitted relates to matters which were not the subject of the witness' direct testimony.

Accordingly, I rule that the documents need not

jbrf 2

be turned over to the defendant pursuant to 3500.

Further, with respect to the grand jury testimony which Mr. Schatten has asked to be received in evidence, that is, the testimony of Rabbi Horowitz, I find that it is admissible as substantive evidence on the authority of the United States versus DeSisto, 329 Fed. 2nd 929, Second Circuit, 1964. There the Court clearly stated that the rule limiting the use of prior statements by a witness subject to cross examination to their affect on his credibility would be inapplicable to testimony transcribed by a court reporter before a grand jury.

See that case at 933 and 934 and, to the same effect, see United States versus Klein 488 Fed. 2nd 481 Second Circuit, 1973.

I therefore rule that the grand jury transcript is admissible as affirmative evidence of whatever is contained therein.

MR. ROSEN: May I take exception to the rules?

THE COURT: Yes. State them specifically, please.

MR. ROSEN: On the question of the grand jury testimony, I think that clearly in this particular case, when the witness has taken the Fifth Amendment, and I put some rather direct questions, I thought, to him to allow this type of grand jury testimony where he perhaps implicates

jbrf 3

himself but certainly I don't think he has been subject to cross examination at that time; I think that it is highly prejudicial to Mr. Wolfish to put in a prior statement. The man said he did not recall the testimony but he didn't deny it either.

Now, he was called as a Government witness. They vouched for his veracity and when he didn't turn out to their liking they now try to use the grand jury testimony affirmatively against the defendant.

I think it is improper and I except to your Honor's ruling.

THE COURT: That states the sole basis for the objection?

MR. ROSEN: That is correct.

THE COURT: Anything further with respect to the other ruling.

MR. ROSEN: On the 3500 material or the alleged 3500 material which your Honor looked at in camera --

MR. SCHATTEN: None, 3500 material.

MR. ROSEN: Since it was viewed in camera by your Honor without affording the defense counsel a chance to look at it, I would ask that your Honor seal it and make it a part of the record and I respectfully except. I can't object to something I haven't seen.

166a

THE COURT: It will be marked as Court's Exhibit 4. It is in my chambers and we will have it downstairs this afternoon and the clerk is directed to seal it and mark it as Court's Exhibit 4.

Nothing further at this point?

MR. ROSEN: Yes, Judge: two things. I have not had a ruling by your Honor on the application I made yesterday for the transcript. As the trial goes, I need it more and more. I don't know if your Honor has granted that application.

THE COURT: I indicated yesterday that if need was established pursuant to the information required by the affidavit that I would sign the order.

Why do you require the suppression hearing transcript?

MR. ROSEN: Well, your Honor, Major Halpern, I believe, is going to testify next or in a few minutes and I just don't have total recall on what he said. But I guess it will be too late anyway. I guess I wouldn't be able to have it now unless it is typed up.

THE COURT: Well, it could be that given the need for it now, if the order is signed, which means you are going to get it anyhow, that the court reporters will make available the clerk's copy which is generally provided

MR. ROSEN: Which one?

MR. SCHATTEN: I believe it has been marked as 3551-A. 3551, I guess, is the salient part.

THE COURT: All right.

Q Will you continue?

A In the initial report I reported that the signatures appeared to me in a preliminary examination to be either tracings -- now, that would be the two signatures on each card -- tracings of -- tracings or very careful copies of signatures. After completion of my photographic work -- and it is not included in the report -- I have determined that they are tracings rather than careful application of handwriting.

Q Can you tell the Court and jury how you reached the conclusion based on your photographic and handwriting compariesons that these were tracings?

A In the initial examination there was a very substantial similarity between all eight signatures Marcia Wolfish, and because these cards are not transparent my first opinion was given as such that possibly they would be tracings.

After I had photographed these cards I had a negative which you can see through, and what I did was I used negatives as more or less overlays on each other,

2 jbmch Murray-direct

of a signature Louis Wolfish presented on these eight cards.

MR. ROSEN: Right.

THE WITNESS: The signature, Marcia Wolfish, in all eight circumstances are taken from the same source signature. In other words, one signature that was used for the tracing. They are all the same. There are two distinctive Louis Wolfish signatures used.

MR. ROSEN: Thank you.

(Witness hands documents to the jury.)

A Just try to overlap the black to the white. You will have to hold it to the light.

MR. ROSEN: I object to this procedure, Judge.

THE COURT: Yes.

MR. SCHATTEN: Could it be done right next to or close to the jury, your Honor, utilizing the same procedure?

THE COURT: It can be done close to the jury, yes.

MR. SCHATTEN: Would you endeavor to do that?

THE COURT: Before you move that, you don't think that you can make use of that wall?

THE WITNESS: No. It was very, very dull, not bright enough, and we are dealing with fine lines in this.

It is my contention, sir, that there are two signatures of Louis Wolfish that were used to make up the cards in question.

THE COURT: Pick it up now.

What do you want to do?

BY MR. SCHATTEN:

Q Did you make similar analyses with respect to each of the cards on Government's Exhibits 17-A through 17-H?

A Yes, sir.

Q As a result of that, what was your conclusion with respect to each of the signatures on those cards?

A On 17-A and 17-B, Marcia Wolfish, Marcia Wolfish were both copied or traced from the same source signature.

Q And that was true of all of the 17 series, is that correct?

A Yes, sir, as far as Marcia Wolfish's signature is concerned.

Now, on the others, if I may give you a rundown, Government's Exhibits 17-F and 17-H are from one source signature of Louis Wolfish. Government's Exhibit 17-G -- 17-B, 17-G, 17-A, 17-C, 17-D and 17-E are all from the same source signature.

thing on that? Maybe it would be appropriate to point out that the Government at this point is calling another witness -- you will recall Mr. Murray was on the stand and will be back later, something like that. Just indicate the course of the proceedings, just a simple word about it.

MR. ROSEN: Well, that would be obvious, that they are calling another witness, most respectfully.

If there is not going to be an explanation for it, I don't see any purpose --

THE COURT: I will do this. I will announce that the witness Murray, the witness who testified last yesterday, whose testimony has been interrupted and that the Government will resume with him either today or Monday and I think that will suffice.

MR. ROSEN: Your Honor, due to the scheduling problems which is not your Honor's fault or Mr. Schatten's or myself, this would have the effect, anyway, of giving the Government the four days to regroup with Mr. Murray.

THE COURT: That is a right that I've never seen any attorney turn down either on the side of the defense or the Government.

MR. ROSEN: I just wanted to make the point.

Secondly, I've been advised by the defendant that Mrs. Martin, the handwriting expert consulted by the

defendant, requested of Mr. Schatten yesterday, and I do this on information and believe -- I wasn't present -- originals, original documents, which the Israeli handwriting lady -- there is going to be another handwriting expert, I understand -- used to come to her conclusions.

I had been advised that Mr. Schatten cannot produce the originals which formed the basis of this second handwriting expert's conclusion and I would like a little time to brief it, your Honor, but I think that the law is quite clear that we are entitled to the same documents, to examine the same documents that the Government expert used and, failing that, the testimony either is incompetent or requires the granting of a motion for a mistrial for failure under Brady.

These documents are crucial. Our expert cannot work with copies when the Government expert is going to be testifying from originals. We are entitled to the originals.

MR. SCHATTEN: I might say we do not have the originals in our possession. In fact, it is our understanding that those documents are currently in the possession of Mrs. Marcia Wolfish.

I should -- I've never seen the originals although my expert is prepared to testify --

THE COURT: What are they?

MR. SCHATTEN: They are letters.

THE COURT: To?

MR. SCHATTEN: They are letters to Marcia Wolfish and the children written by the defendant -- they were written from the Horowitz -- Wolfish, care of Horowitz' home. They went to Marcia and children. They were found in Mr. Wolfish's home during the time of the search --

THE COURT: In Israel?

MR. SCHATTEN: In Israel, and we have copies of them.

The expert is prepared to testify that she examined the originals, she doesn't have them any more, and that's my understanding of the situation.

THE COURT: They were last in the possession of whom?

MR. SCHATTEN: My understanding is that they are now in the possession of Mrs. Marcia Wolfish.

MR. ROSEN: I have no such information, your Honor.

THE COURT: Before that, they were in the possessio of the Israeli police?

MR. SCHATTEN: Yes. All I have ever seen was copies.

MR. ROSEN: Judge, what has happened apparently is that after the Israeli authorities -- if you don't want

to go into this now, I won't take your time.

THE COURT: No, no. I would imagine that the situation is one which calls for the Government to explain, as best they can, the whereabouts of the documents. If they have them, I would say clearly that it would seem that you should have them, and if they don't have them, then I think we may be in a situation where they must explain the whereabouts, inquire as to the whereabouts, very likely, and if there is a reasonable explanation for their inability to proceed with the originals or produce the originals, that then the law, I would think, would reasonably allow them to proceed with the next best things as long as they can be established to be reasonable accurate copies of whatever the originals were.

MR. ROSEN: Normally, your Honor, under, I think it is, the best evidence rule, that is the situation. However, where handwriting and handwriting analysis is apparently the bottom or the basis of the Government's case, and where my handwriting expert says that it is impossible to refute the Government's expert unless she, my expert, examined the same things that the Government did, not copies that may be enlarged in some way, or, as we saw yesterday what happens with copies --

Q During the times that you wanted to contact Mr. Wolfish, what address did you attempt to contact him at?

A Well, at the beginning, we --

Q During the period from May of 1972 until August?

A We had several addresses.

Q Was one of those addresses --

A One of those was 4 Mewo Timna Street, Jerusalem.

Q Were you successful on occasion in contacting him at that address?

A Yes.

Q Did there come a time when you conducted a search of the residence of 4 Mewo Timna Street that we have been discussing?

A Yes.

Q Who was present during the occasion of this search?

A At the occasion of the search there were present Mrs. Marcia Wolfish, my assistant, Sergeant Major Cohen and two witnesses which I asked them to be present.

Q When was the search conducted?

A The search was conducted on August 9, '72.

Q I want to show you what has been marked as Government's Exhibit 27 and 27-A for identification, and ask you, can you identify those items?

A Yes.

Q What are they?

A They are notarial seals and I seized them, I found them during the search at the Wolfish's residence.

I marked them with my initials, the date, and they are also marked by the initial -- they were initialled by Mrs. Wolfish. Yes. Those are my initials and those are the initials of Mrs. Wolfish, Marcia.

MR. SCHATTEN: I offer Government's Exhibits 27 and 27-A in evidence.

MR. ROSEN: I object. This is not a trial of Marcia Wolfish. There is no connection to the defendant and I respectfully object.

THE COURT: Overruled.

Received.

(Government's Exhibits 27 and 27-A received in evidence.)

xx

Q By the way, Major, how many boxes of these seals were there at this place?

A Two. Those two.

MR. SCHATTEN: I would just like to open them in front of the jury, your Honor.

Q I want to show you what has been marked for identification as Government's Exhibits 28-A and 28-B and

I want to ask you if you can identify those documents.

A Government's Exhibits 28-A and 28-B, they are documents which I seized during this search at the Wolfish residence and they were initialled by myself and by Mrs. Wolfish.

Q And can you tell us what those documents are?

A Those documents, they are supposed to be certifications.

Q Are what they what they purport to be?

A Supposed to be certifications of a translation, an English translation of a death certificate of a man named Eliezer Wolfish.

It would say first name, E-l-i-e-z-e-r C-h-a-i-m L-o-u-i-s R., and the last name is Wolfish, W-o-l-f-i-s-h.

Now, this is supposed to be a certification signed by an official of the Israeli Consulate in New York.

Q Is Government's Exhibit 28-B the same kind of document?

A Yes.

Q Also a certification with an English translation of a death certificate?

A Yes. Of Eliezer Wolfish, signed by the official of the Israeli Consulate in New York.

MR. SCHATTEN: I offer Government's -- these

Government's Exhibit 29-A through 29-I for identification.

Can you identify those documents?

A 29-A, this has been taken by me at the search at the Wolfish residence. It has been initialled by me and by Mrs. Wolfish and it also is an authorized translation of a death certificate of the same person, Eliezer Chaim Wolfish. It is dated the 12th day of January, '71, signed againby Rivka Sivan, Consul, but it is a different form, a little different form.

Q You say the form is somewhat different?

A Not the exact form. It is a little changed.

Q The form is slightly different?

A Yes.

Q And when you refer to the form --

A It is the same, it is the same.

Q When you refer to the form you are referring to the front page?

A Yes.

Q For example --

A I am referring to the --

Q The first page?

A Yes, the first page.

Q How about the second two pages? Are they the same or are they different?

A The same.

Q The second page is the same, is that right?

A Yes.

Q And that is the page marked the English translation of the death certificate, is that right?

A Yes.

Q What about the third page?

A It is also the same. The same. The difference is the consular form but the documents translated are the same.

Q Now, is the same thing true of Government's Exhibit 29-B?

A The same is true of Government's Exhibit 29-B.

Q And all the others?

A Initialled by me and by Mrs. Wolfish.

The same goes for 29-C 29-D, 29-E, 29-F, 29-G, 29-H, and 29-I; only on this one, the seal of the Consulate is cut off.

Q You say the seal on 29-I is cut off?

A Yes. This is how I found out.

Q What is the date on each of the documents in the 29 series?

A 12th day of January, '71. All those the same, all the same date, yes.

MR. SCHATTEN: I offer Government's Exhibit 29 series in evidence.

MR. ROSEN: Same objection, your Honor.

THE COURT: Received.

xxx

(Government's Exhibits Nos. 29-A through 29-I for identification were received in evidence.)

Q I noticed you started referring to some small differences between the first page of Government's Exhibits 29-A through I and 28-A and -B. One of the differences, of course, is not --

MR. ROSEN: Objection, your Honor. Asked and answered, and he is leading.

Q I am asking, one of the differences is, is it not, that the top of the form is painted or is, on the 28 series is in black --

A This is blue.

Q And blue, and the seal is slightly different, isn't that right? The same --

(Pause)

THE COURT: All right, Mr. Schatten.

MR. SCHATTEN: Thank you, your Honor.

Q Major Halpern, I want to show you what has now been introduced in evidence as Government's Exhibits 30 and 31. I want to ask you where you saw those documents for the first time.

A Both documents, I seized them at the Wolfish home.

Q That's the address at 4 Mewo Timna Street?

A Yes, the address at 4 Mewo Timna Street.

Q I also want to show you a two-page document marked Government's Exhibit 32 for identification.

Can you identify that?

A Government's Exhibit 32 for identification, they are photostatic copies of the death certificate. I also seized them at the search at 4 Mewo Timna Street, Jerusalem.

Q Can you tell us who the name of the person reflected on the death certificates in 31 and 32 are?

A The death certificate signed, marked Government's Exhibit 31, is a death certificate of Becky Rivka Wolfish.

Q How about Government's Exhibit 32?

A It's the same one. 32 is a photostatic copy of

A In the 34 series it says they are registered in the death registration book under letter W, Page 2.

Q Is the same true of --

A And the same is true in the text of Government Exhibit 33, the same; letter W, Page 2. The same.

MR. ROSEN: I move to strike.

THE COURT: The application is denied.

Q I want to show you what has been marked collectively as Government's Exhibits 35-A through -I, and I ask you, can you identify those documents?

A Those are photostat copies of a death certificate in the name of Eliezer Haim Wolfish.

Q How many copies are there, by the way?

A There are nine copies, and all those were taken by me during the search at the Wolfish residence, 4 Mewo Timna Street, on August 9, 1972.

MR. SCHATTEN: I offer the 35 series in evidence.

MR. ROSEN: The same objection as to 35, if your Honor please.

THE COURT: All right.

The objection is overruled.

MR. ROSEN: I respectfully except.

(Government's Exhibits Nos. 35-A through 35-I for identification were received in evidence.)

xxx

mdrf 4b am 1 Halpern-direct

Q I will ask you, what do you see in the top left corner of 35?

A At the top left-hand corner of 35-C I can see a hole.

Q I show you Government's Exhibit 36 for identification. Where did you see that for the first time?

A Taken by me at the search of the Wolfish residence on August 9, 1972.

MR. SCHATTEN: I offer Government's Exhibit 36 in evidence.

MR. ROSEN: Same objection, your Honor.

THE COURT: Overruled.

Received.

(Government's Exhibit 36 received in evidence.)

xx

Q What is 36?

A 36 is a photostat copy of a death certificate issued by the Ministry of Interior of the State of Israel and it is in the name of Eliezer Chaim R. Wolfish, who supposedly deceased on August 11, 1970. The reason for death is carcinoma. Place of decease, Jerusalem. And it is registered in the death registration book under letter W, page 2.

Q What was the date of death indicated on that

Q Is it your testimony, Major, that these pieces of paper that you have in your hand are not what you took from the apartment?

A Yes. If I check up with my list of documents I gave back, I gave back a number of original documents to Mrs. Wolfish, and those are photocopies of the.

THE COURT: Have you checked that list to see if the originals of these were among those given to her? Have you checked your list for that purpose?

THE WITNESS: I don't know it by heart, your Honor, but if I see my list I can check it.

MR. SCHATTEN: I hand what has been marked 27-A for identification to the witness. Is that your list, Major Halpern?

THE WITNESS: This is the list of documents I took during the search, but when I returned some original documents to Mrs. Wolfish I made out a list and I have her sign those original documents I gave her back.

THE COURT: Where is that list?

THE WITNESS: In the witness room I have it.

THE COURT: You may step down and check that, if you wish.

(Pause.)

THE COURT: Now, have you had a chance to check

whatever you wanted to check to determine whether or not the originals of those papers were given back to Mrs. Wolfish?

THE WITNESS: With your Honor's permission, I will look at my list.

(Pause.)

A Now I can say for sure that the originals of all those I handed back to Mrs. Wolfish

MR. SCHATTEN: What exhibits are you --

MR. ROSEN: This is my examination, your Honor.

MR. SCHATTEN: For the record, what exhibits are you referring to?

THE WITNESS: 45-M, 45-N, 45-K, 45-J, 45-I, 45-H, 45-G, 45-E, 45-D, 45-A, 45-B.

Now, this one I most certainly did not give her back.

MR. SCHATTEN: Which one are you referring to, 45-L?

THE WITNESS: This one is wrong.

MR. SCHATTEN: You are referring to 45-L, is that right?

THE WITNESS: About those, they belong to one of those but I can't see my initials on them.

MR. SCHATTEN: I believe you have one, Mr. Rosen.

MR. ROSEN: I have C.

jbrf am 5a 1 Halpern-direct

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q Do you want to check 45-C, please.

She signed it?

A She signed the receipt, she brought it back. Her signature, when she ever got it back, she signed it.

Q Major, when did you --

THE COURT: Before you go further, just a moment.

What is the status as to 45-C? Was it or was it not given back by you to Mrs. Wolfish?

THE WITNESS: 45-C, sorry -- I wanted to say this: Mrs. Wolfish received a photostat copy of this and this is the copy of the copy. I have it down here.

THE COURT: Referring now to --

THE WITNESS: To 45-C. Mrs. Wolfish received a copy of this.

THE COURT: Where is the original?

THE WITNESS: I don't know. I wouldn't know because --

THE COURT: Now, what about 45-F.

THE WITNESS: Your Honor, during the search, we took --

THE COURT: Excuse me. I have three questions I would like you to answer.

THE WITNESS: Yes.

THE COURT: Did you give the original of 45-C, F and L to Mrs. Wolfish? I believe you have answered one of them -- 45-C.

THE WITNESS: C I did not give the origina.

THE COURT: You did not give back to her in original form?

THE WITNESS: No.

THE COURT: What about L and what about F?

THE WITNESS: May I see it again? I am -- it is mixed up here.

THE COURT: Take your time.

THE WITNESS: L was not given back to her.

THE COURT: All right. And F?

THE WITNESS: I believe, your Honor, that this is, 45-F, belongs to one of those I have recognized but on this particular page I can't see my initials on and I couldn't say now where it came up from.

THE COURT: So you don't know as to 45-F?

THE WITNESS: Yes. But if I --

THE COURT: Then if I have it correct, the witness has testified that he returned the originals of 45-A, B, D, E, G, H, I, J, K, M and N to Mrs. Wolfish and he is uncertain as to whether he returned 45-F, uncertain or he

says he did not return 45-C to her and doesn't know where the original is there and 45-L was not returned to her.

THE WITNESS: With your Honor's permission, this isprobably part of one of the letters but --

MR. SCHATTEN: Which one are you referring to?

THE WITNESS: 45-F and 45-B. Most likely they are part of the letters but somehow it has come off so I couldn't say for 100 per cent sure, I wouldn't say but most likely it is.

THE COURT: Now, we will ask the jury to step out for a few moments while we discuss something.

Don't talk about the case among yourselves, please.

(The jury left the courtroom.)

THE COURT: Now you are objecting under the best evidence rule, is that correct?

MR. ROSEN: No, not alone. I didn't have a chance to look at all the proffered exhibits. Most of them looked to me to be personal letters from whomever they are from.

MR. SCHATTEN: I think the record --

MR. ROSEN: Mr. Schatten, let me finish, please.

THE COURT: Let counsel finish.

MR. ROSEN: They appear to be personal letters, having no bearing on the case unless the Government

MR. SCHATTEN: All right. And for handwriting purposes is one particular purpose. The other purpose to which I might intend to put these is for purposes of showing addresses. That would be the other purpose.

THE COURT: May I see them?

MR. ROSEN: I think, your Honor, that I mentioned to your Honor previously that should any originals exist that were in the custody of the Government at any time, I think it was their obligation to preserve them for the defendant and I don't know under what circumstances they were given back to Mrs. Wolfish.

THE COURT: Let's explore that a minute.

Major, can you tell us when the documents which have been returned to Mrs. Wolfish were returned to her?

THE WITNESS: Yes, your Honor.

On July 14, 1974, Mrs. Wolfish, represented by her counsel --

MR. ROSEN: Excuse me. Is that '74?

THE COURT: '74?

THE WITNESS: Yes. '74 --filed an application at the Magistrate's Court in Jerusalem, asking an order given to the police, the Israeli Police Force, to have returned to her possession everything taken away from her house during the search on August 9, '72.

MR. ROSEN: Which are the ones you are going to use?

MR. SCHATTEN: To tell you the truth, the key most important ones, are A and B.

THE COURT: Do you want to limit yourself to those?

MR. SCHATTEN: Well, I'll hand up the others as well, since that is what the Court asked.

THE COURT: I am not interested in them if they are not going to be an issue.

MR. SCHATTEN: Well, perhaps I ought to hand up the other ones as well, but -- (handing)

THE COURT: Now, it is the Government's position that these exhibits were written by whom?

MR. SCHATTEN: On A and B, it is the Government's position they were written by Mr. Wolfish, the defendant herein, and to tell you the truth, your Honor, if the Court were to limit me to those exhibits, I would not press the matter further.

THE COURT: Well, the issue is the same whether it is one or two or 15.

MR. ROSEN: The same issue, your Honor, yes.

THE COURT: But, be that as it may, are you offering them for the truth of what is asserted in any of these, excluding for the moment the address part?

particular time, all I can do is ask Mr. Slavinski, and, to my knowledge, there is no one else involved here.

(Pause)

MR. SCHATTEN: It is fair to tell the Court that I don't believe, based on what Mr. Slavinski tells me, that we ever had physical possession of any of the documents that the Court is now focusing on -- 45-A, -B and the other documents in the Court's possession.

Mr. Slavinski tells me that if his recollection is correct, there was a time last summer when Major Halpern was here, right in anticipation of the July 1st trial, whatever that was, late June I guess it was -- that he was here, when we may have seen the particular documents and, as I say, I have no knowledge of the legal proceeding going on in Jerusalem.

THE COURT: When did the Government's expert see them?

MR. SCHATTEN: Back in 19- -- they were seen fairly soon after the search. The Government's expert is a Hebrew handwriting expert attached to the Israeli police. This was all done before I ever got into the case or anything.

THE COURT: Well, let me see if I can reach some sort of a decision here now.

seize them from him?

In any event, here is my ruling, Mr. Rosen. I think you have your record now.

I am going to receive 45-A and 45-B. I have looked at them with a view toward trying to determine whether or not the handwriting which appears on these documents exists with sufficient clarity to cause a reasonable person to conclude that a comparison can be made of the kind which the Government has represented it intends to make here. I am referring now to a comparison by experts, however limited it may be by virtue of having worked with copies rather than originals.

I believe that a comparison is nevertheless possible. I believe that nonexperts will similarly be able to make the kind of comparison the Government is asking to undertake.

I will permit you, however, if you wish to do it, to bring out further through this witness or any other witness whatever you wish to by way of suggesting to the jury any limitations that the experts may have faced by virtue of not having the originals, that is, your experts, or the jury may experience by virtue of not having the originals, and you may allude to that in your summations -- all of that, if you wish to.

xxx

(Government's Exhibits Nos. 45-A and 45-B for identification were received in evidence.)

THE COURT: Of course, Mr. Rosen, on the question you posed with respect to the expert, it has yet to be determined who that person is and what the qualifications are.

MR. ROSEN: You mean my expert or the Government's expert?

THE COURT: Well, any expert.

MR. ROSEN: Well, my expert has told me she cannot work for me on a copy against an original. It's like the Yankees against the minor leagues. It doesn't work that way.

I'll have to find an expert that is not so touchy.

THE COURT: All right.

Now, it is 1:10 p.m. We are going to continue until 2:00 o'clock.

Bring the jury in.

(Jury present)

THE COURT: All right. Proceed.

Had there been an offer?

MR. SCHATTEN: Yes. We had offered Government's Exhibits 45-A and -B.

THE COURT: And Mr. Rosen objects and the Court overrules the objection and they are received.

Now you may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. SCHATTEN:

Q What, if anything, did you do with the originals of 45-A and 45-B when you seized them on August 9, 1972?

A They were sent to the handwriting expert at the laboratory, Jerusalem headquarters, for examination.

Q What was the name of the handwriting expert?

A Major Varda Tamir.

THE COURT: Mrs. Varda Tamir.

Q I want to show you what has been marked as Government's Exhibit 46 for identification.

Can you identify that?

A Yes, sir.

Q What are they?

A Xerox copies of the pages of the passport of Mrs. Marcia Wolfish.

Q When did you receive that?

A I received her passport in July of '72. Probably some day in July of '72.

Q And this is a Xerox of the passport?

A Yes. These copies are made by me, on my behalf.

named Eliezer Leviathan. This is what I was told.

Q Did anybody tell you it was the apartment of Louis Wolfish?

A No, no, no.

Q Weren't you instructed by American agents to try to find Louis Wolfish?

MR. SCHATTEN: I object, your Honor.

THE COURT: Just a moment.

MR. SCHATTEN: Your Honor --

THE COURT: Just a moment, please.

Sustained.

Q Tell his Honor and the jury, please, how it came about that you became involved in the Wolfish investigation.

A Sometime in the beginning of May '72, I was instructed by my superior officers to find out some details about a death certificate in the name of Louis Wolfish issued by the Ministry of Interior, Jerusalem division, and also to find out some details, some things about a man named Wolfish, if he was living in Jerusalem, if he was living, whether he worked once for the Ministry of Justice, if there was a record, and I was given, when I was instructed those things, I was given a copy of a death certificate in this name, and attached to it an official

translation.

So I started an investigation in the case of Wolfish.

Q Who gave that death certificate to you?

A I received it from my department, from my boss.

Q Commander Roth, isn't that his name?

A Yes.

Q Do you know where he received it from?

A Yes, I do. I know for certain that we were asked to find out all those things on the request of the postal inspector, the United States Post Office.

Q So you embarked upon your investigation at the request of American agents, isn't that correct?

A I embarked upon my investigation --

MR. SCHATTEN: I object, your Honor.

THE COURT: Your objection?

MR. SCHATTEN: The grounds of my objection?

THE COURT: Yes.

MR. SCHATTEN: It's not germane to anything in evidence before us.

THE COURT: Overruled. You may answer.

A I started my investigation under instructions my superior officers, but the reason for it was a request made by the U. S. Post Office which was given over to the

Israel police force.

Q I take it, Major, that based on your long experience, starting with the founding of the State of Israel, you are acquainted with the laws of the State of Israel?

A Yes.

Q Do you remember early in your direct testimony Mr. Schatten was showing you all these entry and exit papers?

I don't remember the number, but you remember you said he came in on a certain day?

A Yes.

Q Anything illegal about coming and going from the State of Israel?

A I beg your pardon?

Q Is there anything illegal in the State of Israel to come and go as one wishes?

A If you come or go according with the law there is nothing illegal.

Q Did you see anything in these papers that Mr. Schatten showed you that there was any illegal entry or illegal exit by Mr. Wolfish?

A No.

Q Did you see in any of the papers that Mr. Wolfish

A No.

Q You met him when he came down to police headquarters, isn't that correct?

A Yes.

Q When you went into that apartment to search, who was there when you went in?

A Mrs. Wolfish and a child, and maybe another child.

Q Maybe six children?

A Maybe. I don't remember. Children. Whether it was one or two --

Q Did you ask her what her name was?

A Yes.

Q Did she say her name was Marcia Wolfish?

A Yes.

Q Did you ask her who the kids were?

A No.

Q You just assumed they were her children?

A She had in her arm a small baby, this I remember for certain, that she held it in her arms.

Q Did you see Louis Wolfish in that apartment?

A I beg your pardon?

Q Stand up. Did you see him in that apartment?

A No, he wasn't there.

Q How long were you in the apartment?

A It wasn't watched. I had several addresses in which Mr. Wolfish could be, and one of those addresses was No. 4 Mewo Timna Street. Therefore, I instructed my assistant to find him there until one day I found him myself in this phone conversation when it was established that Mr. Wolfish actually was Leviathan, and they were both the same.

MR. ROSEN: I am going to strike what was established.

THE COURT: Overruled.

Q Did you ever photograph or take any pictures of Mr. Wolfish coming out of that apartment house?

A No.

Q When you went into the apartment, and you took these documents or these pieces of paper, how many documents did you seize?

A May I have the list I wrote?

Q Would I be correct in asking you whether you seized 81 documents?

A I seized 84 items. Now, they included two packets of seals and a typewriter. That would be 81 documents, but some of those documents they may have been -- consisted of one, two or three pieces.

Q Did you say in any report whatsoever, or

tell the Government, the American Government, that you took 81 documents?

A I took 81 documents, but there are more pieces than 81 because --

Q I understand.

A -- I numbered every one, and all together --

THE COURT: Put a question.

A -- 84. There were 84 pieces, but 81 questions.

Q Has Mr. Schatten shown you here in this courtroom today all 81 documents that you seized?

A I didn't count. He showed me a lot of them. If all of them or not, I never counted them.

Q We have certain exhibit numbers. Do you recall seizing anything that Mr. Schatten hasn't shown you?

A I can't tell you this by heart, because you are talking about 81 documents.

MR. ROSEN: I would ask the Government for some sort of representation that all that has been seized has been produced, I have no way of knowing.

THE COURT: Or not produced.

MR. ROSEN: Or not produced.

MR. SCHATTEN: Part of the problem would be that I don't speak Hebrew and don't read Hebrew, and neither to my knowledge does Mr. Slavinski, but I know there is a

reference there to a typewriter.

THE WITNESS: The typewriter for certain is not here.

MR. SCHATTEN: Above and beyond that I can't do that. I could show the witness all the documents.

THE COURT: Mr. Schatten says he can't do that, so you will have to approach it some other way.

Q Where did you find the typewriter?

A In the apartment.

Q Did you do tests on that? Did you do any tests on the typewriter?

A I didn't. I gave it back to him.

Q You said you want to be very careful with words. You said you gave it back to him. Who did you give it back to?

A The typewriter was given back to the Wolfishes, the family. Maybe him or her. I do remember that I several times asked him --

MR. ROSEN: I move to strike this.

THE COURT: No.

MR. ROSEN: I just asked who he gave it back to.

THE COURT: Let's see. Do you know who you gave it back to or to whom it was given?

THE WITNESS: Your Honor, it wasn't given back by

I read the transcript over the week end of Major Halpern's testimony, and he stated quite clearly that he began his investigation at the request of American authorities. If your Honor wants that page reference I will have to go through the last book the reporters furnished me with.

I think that I would like to pursue further the question of whether or not the documents, or whatever was taken out of the apartment in Jerusalem, is properly admissible in this court.

I renew my objections to it. I think they are inadmissible, and clearly they are serving as the basis of the Government's case.

THE COURT: I will tell you what you do. You can make an application to reopen the suppression hearing at any time before the conclusion of this case, but I would only entertain the application in writing, in which you set forth what reasons you advance as to why it should be reopened, and of course that would contemplate that something new and additional has presented itself which justifies the reopening of that hearing.

I will give Mr. Schatten one day to reply to that, in case there is opposition on the Government's part.

MR. ROSEN: Thank you, your Honor.

MR. ROSEN: Yes. The defendant has directed me to apply to your Honor, prior to the Government handwriting experts resuming the stand --

THE COURT: Before you go further, several times you have made a statement that your client has directed you to do certain things. Now, I do appreciate the situation in which you find yourself, based upon our prior discussions, and so forth, on the question of representation.

But, you will recall that, as I stated at one of our conferences, and I think the one on December 17th, the requirements imposed upon an attorney do not require him to proceed as his client directs him, except in a very, very limited number of instances which I recited at that time.

So, what I am really saying to you is if you have an application at any time, Mr. Rosen, don't preface it with your client directed you to, because I do not acknowledge that you must respond to what your clients directs you to do.

You will have to make a judgment as to whether, as his attorney, you choose, as a part of your legal representation on his behalf, to proceed in a certain fashion. That is all I am interested in. Either you do

or you don't. If you do, then I will hear you. If you don't, then I won't even know about it.

MR. ROSEN: I understand what you are saying, your Honor, except in this particular instance, the defendant wants another lawyer to represent him at the hearing on the efficacy of the handwriting exemplars because he says that our interests are not together. He says I can't adequately represent him at that kind of a hearing.

THE COURT: I won't respond to any such thing. I suppose you did have to make that application.

MR. ROSEN: That's why I did it.

THE COURT: And the application is denied.

Now, are we ready to go ahead?

MR. ROSEN: Sure.

THE COURT: Before we do, who is the witness now?

MR. SCHATTEN: John Murray.

THE COURT: We are resuming with Mr. Murray. That will be direct examination continued. Will there be any use of the exemplars which were taken from the defendant pursuant to Court order?

MR. SCHATTEN: Oh, yes, of course.

THE COURT: That are not presently in evidence?

MR. SCHATTEN: No.

Q I believe at the conclusion of the examination last week, Mr. Murray, we had shown you Government's Exhibits 17-A, -B, -C, -D,-F, -G, and -H, the various account cards, and I want to ask you again, what was your conclusion with respect to the signatures of Marcia Wolfish on those documents in the 17 series?

A Yes, sir.

There are eight signatures in these documents of the name, Marcia Wolfish. My conclusion after the examination was that they were all traced from a single source signature.

Q How about your conclusion with respect to the signatures of Louis Wolfish that appear in the 17 series?

A Yes, sir.

Again, there are eight signatures, Louis Wolfish. Examination -- I formed the opinion that six of the signatures were traced from one source signature and two of the other were traced from a different source signature. They are quite different in appearance, those two.

MR. SCHATTEN: Can we have this marked as Government's Exhibit -- I am asking that the document that had previously been deemed marked as 51-C, the transparency, be marked in evidence now as 51-C and I would also like this document, which is a card, marked as

same fashion?

A Yes, sir. It's a copy from the print of the partial check. I just photographed the part that was actually in question; the signature.

Again, I can take --

MR. SCHATTEN: I offer Government's Exhibit 51-H in evidence.

MR. ROSEN: Same objection, if your Honor please.

THE COURT: Received.

(Government's Exhibit 51-H received in evidence.)

xx

Q Your conclusion was that the Marcia Wolfish signature on each of the eight account cards and on the back of the check was taken from the same source material; is that correct?

A Yes, sir, it was.

Q And your conclusion with respect to the Louis Wolfish signature was that there were two signatures taken from the -- maybe you can explain your conclusion?

A Yes, sir. There are eight -- I was presented with eight signatures. Six of those eight signatures were from the same source signature.

In other words, they were retraced.

Q In other words, I want you to look at the exhibits

warrant suppression of the exemplars.

In this connection, the Court notes that suppressing the exemplars on such weak grounds would gain nothing but delay sin-e I have already ruled that the Government was entitled to the taking of the exemplars.

Now, with that, I think the matter is laid to rest for purpose of the need for me to respond to it and we can proceed.

MR. ROSEN: I didn't make the objection on those grounds, Judge.

THE COURT: I know you didn't and I am simply anticipating what might have reasonably been the objections I asked you to submit on it. It does seem that as this is developing with Mr. Murray now before the Court again and various items in evidence representing signatures of one kind or another and including some of those exemplars --

MR. SCHATTEN: No. The transparencies that we now want to pass to the jury -- I think your Honor anticipated the Government because precisely the next items were the exemplars.

THE COURT: My wish was to put you in a position to have a ruling so you could know how to proceed next.

MR. ROSEN: Judge, I --

DEFENDANT WOLFISH: I just want to say something.

THE COURT: No. You can except.

DEFENDANT WOLFISH: I except.

MR. ROSEN: I want to move on a different basis.

THE COURT: Mr. Wolfish, I don't want to hear from you, please.

Go ahead, Mr. Rosen.

MR. ROSEN: Judge, this is probably the most prejudicial encounter in the trial so far, there has not been even a suggestion that this man had anything to do, whatsoever, with any of these signatures.

THE COURT: It may be that you wish to renew your motion at some later point in the trial. I don't know what the Government is going to do next. You know that.

MR. ROSEN: I know that. But I would like to strike it at this point. It is prejudicial to let them line up the things when there is no connection to him at this point.

THE COURT: If it is prejudicial to have allowed it to happen, the damage has been done in any event.

So you use your own judgment as to whether you now wish to circulate them to the jury, Mr. Schatten.

MR. SCHATTEN: I certainly do.

THE COURT: Application is denied.

MR. ROSEN: Respectfully except.

BY MR. SCHATTEN:

Q I want to show you Government's Exhibit 15-A and B. I want to show you the 50 series and specifically direct your attention to Government's Exhibit 50-C.

Would you tell us what Government's Exhibit 50-C is and also Government's Exhibit 21-A and 21-B?

THE COURT: 21-A?

MR. SCHATTEN: 21-A and 21-B.

A 21-A is a Postal Service form for a change of address from a new to an old address and it bears the signature of the party involved.

Q That is the signature of Louis Wolfish, is that correct?

A Louis Wolfish.

That is dated 7-7-70.

21-B is another card of the same nature, dated December 15, 1970, and that is also signed Louis Wolfish.

Q And in each case, we are talking about change of address forms and I am reading from the cards, with the old address being reflected as 94 North Main Street, Spring Valley, New York and the new address being 25-10 30th Road, Astoria, Queens in each instance.

Did you make any examination of those particular change of address cards with the documents in the 50 series,

namely, the handwriting exemplars of Louis Wolfish?

A Yes, sir, I did.

Q Can you tell us what you did?

A First, I was to determine if both cards were signed by one and the same person and then if they were, were both cards signed by the author of specimen signatures submitted to the laboratory -- various names, in particular, L. Wolfish, Louis Wolfish, Marcia Wolfish and so forth.

I believe there is another name --

THE COURT: Marked here as?

MR. SCHATTEN: Government's Exhibits in the 50 series, A, B, C, D and E.

A Yes.

Q Did you reach any conclusion as to whether the two cards, change of address cards, Government's Exhibit 21-A and 21-B, were signed by one and the same person?

A Yes, sir, I did.

Q What was your conclusion?

A That was my opinion, that both cards were signed by the same person.

Q What was your conclusion as to the author of those two, the person who signed Government's Exhibits 21-A and 21-B?

A Sir, that both cards were signed by the person

who signed the specimen sheets and, under the 50 series, accumulative examination of all of these documents submitted to my office, with the results that --

Q In your opinion --

MR. ROSEN: I am not sure what documents we are talking about. The two pink cards?

MR. SCHATTEN: Yes, the exemplars of Louis Wolfish, the Government's Exhibits 50 in the 50 series.

MR. ROSEN: I'll stipulate that the two pink cards were signed by Mr. Wolfish, the defendant.

MR. SCHATTEN: All right.

MR. ROSEN: Except I still reserve on the date. I don't think it is relevant since it was before the indictment. But outside of that, those are change of address cards.

THE COURT: In other words, 21-A and B, you concede that they were signed by the defendant.

MR. ROSEN: That is correct. Reserving on the relevancy of 21-A, that is all.

THE COURT: Yes.

Q Did you also have occasion to examine Government's Exhibit 25 in evidence, namely -- I have previously shown you 21-A and 21-B, the change of address cards and I am now showing you Government's Exhibit 25, which is the

registration slip with the number 00035, the article mailed in Jerusalem, addressed to Marcia Wolfish, 25-10 30th Road, with the Astoria zip code, with the name A. Lisio at the bottom, delivered 9-15, and there is a received sign and it has a signature.

Did you have occasion to analyze that particular document?

A Yes, sir, I did.

Q What was your conclusion with respect to that document?

A As stated in my report, sir, it is practically illegible. It is a scrawl in the nature -- there are only three letters, about, that are recognizable as such.

MR. ROSEN: Judge, I move to strike this whole testimony.

THE COURT: No. Overruled.

MR. ROSEN: Respectfully except, your Honor.

A And that I could not identify it as having been written by the author of those specimens in the 50 series but that it was entirely within the possibility --

MR. ROSEN: Now, Judge, I move to strike, most respectfully.

THE COURT: Strike it and the jury will disregard that.

From the analysis you have conducted in this case and based on your experience, can you make a positive identification that Louis Wolfish signed those papers? Yes or no.

A These are tracings, sir.

Q Yes or no, please. Can you say positively that he signed them?

A No, sir.

Q Did you ever take a handwriting exemplar of a man by the name of Isidore -- Israel Horowitz, Rabbi Horowitz, in Rego Park?

A No, sir.

Q Do you know who signed Exhibit 25?

A I said it couldn't be identified, sir.

Q Did you ever learn who signed it?

A No, sir.

Q Did the Government ever tell you?

A No, sir.

Q Did Mr. Slavinski ever tell you who really signed for this mail?

A No, sir.

Q Outside of the Exhibits 21-A and B which you heard me concede Rabbi Wolfish signed --

A Yes, sir.

Q -- have you identified positively any other documents that Mr. Wolfish signed, that are questioned documents?

A Just those two, sir.

Q Do you know who traced any of the materials on the exhibits in front of you?

A No, sir.

Q Did you ever talk to a lady who is an Israeli handwriting expert?

A Yes, sir.

Q In this case?

A Yes, sir.

Q Did you ascertain from her whether she had handwriting of Israel Horowitz?

A I didn't discuss the case with the lady, sir.

Q You mean just socially you talked with her?

A Socially, yes, sir.

MR. ROSEN: I have nothing further.

THE COURT: Any redirect?

MR. SCHATTEN: One question for the record.

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q All of the exhibits, the contact prints and transparencies and negatives, when were they prepared by you?

but I am telling him now.

THE COURT: Step into the robing room.

MR. SCHATTEN: Perhaps it might be appropriate at this time to have the witness remain outside or whatever.

THE COURT: The witness will remain here. We will step out.

(In the robing room, counsel and defendant present.)

MR. ROSEN: As I understand the grand jury testimony of this lady --

THE COURT: Who is she?

MR. SCHATTEN: A woman employed by the Israeli Consul in New York.

MR. ROSEN: She is prepared to testify that she made an identification from one picture shown to her, by one of the predecessors to Mr. Schatten in the case and from that she will apparently attempt to make an in-court identification of Rabbi Wolfish.

I think under the trilogy of cases referred to outside, this is a highly improper and suggestive practice -- that is, the practice of prior to court showing a single picture to make an identification and I most respectfully ask your Honor to inquire of the Government -- maybe my representations are not accurate and I'll stand corrected

but this is my best belief at the moment.

THE COURT: You know the standards of the cases.

MR. SCHATTEN: Your Honor, I argued them in the Court of Appeals this Friday.

In the first place I will represent to the Court that this witness is prepared to testify that she observed the defendant on at least two if not three occasions for an aggregate period of approximately 30 minutes which means that her opportunity to observe the defendant was far more than is seen in a number of cases in this court and I refer the Court specifically to U.S. ex rel Phipps versus Follette and U. S. ex rel Gonzalez versus Zeleker and United States versus Yanishefski, the Second Circuit.

My understanding of the situation is that the witness originally was shown six photographs from which she picked out the defendant's photograph and the grand jury testimony speaks for itself.

I believe that she identified that particular photograph over a -- I think the grand jury testimony was November of 1973. It is now January of 1975. So, even assuming arguendo that she had been shown one photograph in the grand jury testimony and I think the record will speak for itself, that was over a year ago.

I will tell the Court, since Mr. Rosen has inquired about it, recently, I had occasion to show her all six

217a

photographs. I showed it to all six photographs at a time when she was looking at them face up and my understanding is that once again she selected the defendant's photograph.

I see no issue of any substance whatever, even if there had been a suggestive showing in the grand jury.

MR. ROSEN: I think we are entitled to see the photographs.

MR. SCHATTEN: I will turn it over after the direct testimony.

MR. ROSEN: Your Honor might want to rule up front, so that we don't get into any more problems.

MR. SCHATTEN: It seems to me that Mr. Rosen's position should have been one that was made pretrial. Usually applications of this kind are always made pretrial so the Government would have a right of appeal.

MR. ROSEN: I just saw the grand jury testimony.

THE COURT: When did he get the grand jury trial?

DEFENDANT WOLFISH: In the middle of the trial.

MR. SCHATTEN: Yes, but nonetheless, it is common practice in this court for defense counsel to ask for photographic spreads and whatever other identification testimony.

THE COURT: You mean in a demand for particulars?

MR. SCHATTEN: For example, yes.

THE COURT: And none was made?

MR. SCHATTEN: No.

MR. ROSEN: I made a request under Rule 16, we didn't stipulate to discovery but to be frank it didn't dawn on me that this type of a case would have one of these identification type problems.

THE COURT: Why don't you share the photographs with him in any event?

Are they readily at hand?

MR. SCHATTEN: Yes.

THE COURT: Would you produce them, please?

(Pause.)

MR. SCHATTEN: This is the spread.

(Mr. Schatten placed photographs on the Court's desk.)

THE COURT: Well, Mr. Schatten has produced ten photographs. Three of them are doubles.

Are we to assume that the one which bears the marking on the back 8-15-73, with the initials AG, which is marked Exhibit No. 2-MTC, November 15, 1973, U. S. Grand Jury, is the one the witness is going to identify in court: that is, the one with the beard?

MR. SCHATTEN: I believe that is the photograph that she identified, yes.

MR. ROSEN: I would say -- sorry, your Honor.

THE COURT: Well?

MR. SCHATTEN: There are also the initials EB.

THE COURT: Well, Mr. Rosen.

MR. ROSEN: Well, Judge, it is about as obvious as the beard on his face, that the showing to this witness of a series of photographs of a rabbi concerning some Israeli documentation with a beard and the others not having a beard, I say it again, it is very clear most respectfully that this is not the proper procedure as outlined in the cases referred to.

THE COURT: Why would this not be suggestive? If we are to assume, and you correct me if I am incorrect in this assumption, that at the time this lady made her observation, the person she is about to tell us she observed was wearing a beard, if we are about to assume that as her testimony, why would it not be suggestive to merely show her one picture out of ten of a person who is bearded?

Suppose you had a suspect or a subject who was white and you showed ten photographs, nine of them

THE COURT: Are you saying that on the basis of that -- first of all, you are telling us that the witness observed the defendant at some time, some point in time, way before these pictures were ever, or any other pictures were presented to her?

MR. SCHATTEN: In January of 1971.

THE COURT: The answer is yes?

MR. SCHATTEN: Yes. January of 1971, way before any pictures were shown to her.

THE COURT: Are you telling us that she could make an identification of the defendant, independently of the photographs, and from that mere -- not mere, but that aggregate of thirty minutes' observation?

MR. SCHATTEN: Yes, your Honor.

THE COURT: All right. Then don't use the pictures.

MR. SCHATTEN: Very well.

THE COURT: I'll grant your application to the extent that you are saying that as a part of the Government's direct examination you protest the use or object to the use of these photographs.

MR. SCHATTEN: Very well, your Honor.

THE COURT: I sustain that objection.

Now, we will proceed.

by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHATTEN:

Q Miss Bahrav, by whom are you employed?

A By the Consular General of Israel in New York.

Q Keep your voice up so everybody in the jury and everybody in the back can hear you.

A All right.

Q And what is your position with the Consular General of Israel in New York?

A Administrative assistant.

Q How long have you been an administrative assistant with the Consular General of Israel in New York?

A The last two years.

Q What were you doing before that time?

A I worked in the Consular Department of the Consulate.

THE COURT: I think the jurors can't see the witness.

Q Could you tell us what your duties were at the Consular Department?

A I was in charge of the notarization desk.

Q And what did your duties in charge of the

on Government's Exhibit 28-B?

A Which one?

Yes.

Q Is there any portion of Government's Exhibits 28-A and 28-B in your own handwriting?

A Yes.

Q What portion is that?

A The words here, Hebrew, English, English, Hebrew, and 5th day of January, '71, and the numbers here on the feet.

Q Do you see the individual in court today who brought in Government's Exhibits 28-A and 28-B to the Israeli Consulate?

A I think so.

Q Would you point him out to the Court and jury?

MR. ROSEN: Your Honor, I would object to any further testimony from this lady based on her answer she has already given.

THE COURT: Overruled.

MR. ROSEN: Respectfully except.

Q Would you answer the question, please?

A I think that the gentleman in the corner.

Q Would you point him out please?

A (Witness points)

MR. SCHATTEN: Let the record reflect that the witness has identified the defendant Louis R. Wolfish.

MR. ROSEN: Not necessarily. I would like the record to show that she has been shrugging her shoulders while she pointed.

THE COURT: Just a moment.

Step down and put your hand on the shoulder of the person you identify.

THE WITNESS: I think that this gentleman (pointing).

Okay now?

THE COURT: Counsel, unless you are prepared to concede the identification --

MR. ROSEN: No, sir.

THE COURT: Well, go put your hand on the shoulder of the individual, please.

THE WITNESS: This one (putting her hand on shoulder of the defendant).

THE COURT: Indicating the defendant.

All right. Come back, please.

(The witness resumes the witness stand.)

Q Mrs. Bahrav, would you tell us, if you would, when did you prepare those particular documents, referring now to Government's Exhibits 28-A and 28-B?

it's the Israeli Consulate business.

THE COURT: Objection overruled. Received.

xxx (Government's Exhibit No. 28-C-1 for identification was received in evidence.)

THE COURT: I think, Mr. Rosen, that we have already agreed that photocopies can be substitued for the original.

MR. ROSEN: Yes.

DIRECT EXAMINATION CONTINUED

BY MR. SCHATTEN:

Q Mrs. Bahrav, would you tell the Court and jury the events of January 5, 1971, by which Government's Exhibits 28-A and 28-B came to be prepared?

A Well, a person came in with a Xerox of a death certificate and a translation of it, and asked me to have it certified, which I did. It is something that we are used to do.

Q Did you have any other conversation with that particular individual on the date in question?

A Well, yes. He was very interested in the technicalities of what I do. He asked me about every aspect of, you know, I put the ribbon on and stuff like that, and what exactly the form on it says.

Q You explained to him the procedures that you

followed?

MR. ROSEN: I wish -- I object.

THE COURT: Don't lead her.

Q Would you tell the Court and jury exactly, as best you can recall, the conversation you had with the individual you have identified?

A Well, the conversation originated from the fact that he did not bring the original death certificate, only the Xerox, in which case our certification says, if I may read from here, nothing in this authentication of the translation shall be deemed to be an authentication of the contents of the translated document and the legal validity thereof, and he inquired to me about this paragraph, and then I explained to him that if he brings me the original, if a person brings me an original death certificate, then we don't have this paragraph in our certification and instaed we certify to the correctness of the seal on the death certificate which implies we certify the correctness of the document itself.

All that I explained to him.

Q By the way, I would like you to take a look at the third page of Government's Exhibits 28-A and 28-B.

A First --

Q The last page.

Exhibits 28-A and -B.

Was that the seal that was affixed by you?

A Yes.

Q And whose seal is that?

A That's the seal of the Consular General of Israel in New York. It's a raised seal.

Q A raised seal, you say?

A A raised seal. Like in the birth certificates. If you have it, you can feel it with your hand.

(Documents handed to the jury)

THE COURT: I think you can continue.

Q You have previously identified the defendant as having come to the Israeli Consulate in New York on January 5, 1971.

Did there come a time when you saw the defendant on a second occasion?

A Yes.

Q When was that?

A Well, it was January 12, '71.

Q January 12, 1971?

A I could see it from the book. I didn't remember it.

MR. ROSEN: I am sorry. Most respectfully, I didn't hear the answer.

THE COURT: Read it back.

(Record read)

Q I show you what has been marked in evidence as Government's Exhibits 25-A through -H, together with 29-A through -H, together with Government's Exhibits 37 and 38, and ask you if you can identify those documents.

A Yes.

Q What are they?

A Those are, again, translations of the death certificate.

Q How many transaltions are there?

A Nine whole, and two more just first pages.

Q Did you prepare the first pages on each of those particular documents?

A Yes.

Q What is the date on each of those documents?

A January 12th.

Q Of what year?

A '71.

Q 1971?

A Yes.

Q Would you describe the circumstances of your meeting with the defendant on January 12, 1971?

A Well, the person came in again with a death

certificate, asked me to notatize a translation, but this time it was of a different -- the death certificate was of a different person. It was of a woman, a woman's death certificate. Rebecca. Rebecca Wolfish. Becky or Rebecca.

Q The name was what?

A Rebecca Wolfish. I think it was Becky Rebecca Wolfish.

MR. SCHATTEN: Can we mark this page with the paper as being Government's Exhibit 28-C-2?

xxx (Government's Exhibit No. 28-C-2 was marked for identification.)

Q I want to show you what has been marked as Government's Exhibit 28-C-2 for identification. Can you tell us what entries are reflected at the top of the page?

A Well, it's also in Hebrew.

Q Can you tell the Court what it says?

A Becky Rebecca Wolfish.

MR. ROSEN: I object if she is going to read from something not in evidence.

MR. SCHATTEN: I believe the whole book is in evidence.

MR. ROSEN: Is the whole book in evidence?

jbrf 3 pm 1 Bahrav-direct

BY MR. SCHATTEN:

Q I want to ask you, going back to the 28 exhibits, Government's Exhibits 28-A and B, could you tell us what the date of death on the Louis Wolfish death certificates is as indicated on those documents?

The English date of date.

A November 15th -- It is the date of -- sorry.

It is August 11, '70.

Q August 11th of 1970, is that correct?

A Yes.

Q And those are the certifications you prepared on January 5, 1971, is that correct, referring to Government's Exhibit 28-A and 28-B?

A Yes.

Q I believe you were telling us that on January 12, 1971, you prepared the certifications with respect to the death certificates of Rebecca Wolfish, is that correct?

A Yes.

Q And those pages that are in front of you are all pages, the front page at least relating to the certifications that you prepared, is that correct?

A Yes.

Q Now, are there corresponding entries in

A Yes.

Q And in the documents in the 29 series the only place you can detect a seal is on the back of the first page, is that correct?

A Yes.

Q Can you detect a seal on any of the second or the third documents in the 29 series?

Look at all of them, if you would.

A No.

Q Now, Mrs. Bahrav, would you tell the Court and jury the conversation that you had with the person you have identified as the defendant on January 12, 1971, when he brought in all those death certificates of Rebecca Wolfish?

A I don't remember the whole conversation of course but what I remember is that I told him, he brought me too much work, too many copies, and I asked him to come, I told him I couldn't do it on the spot and I asked him to come later to pick them up.

I don't remember if I told him to come later the same day or the next day but I didn't do it for him on the spot.

Q Can you speak up a little louder so the Court and jury can hear you, please?

At that time did the person you have identified as the defendant bring in the original of a Rebecca Wolfish death certificate?

A At that time he brought the original of the certificate, Rebecca Wolfish.

Q Did there come a time when the same individual came back to pick up all the various copies of the certifications that you prepared?

A Yes.

Q Were the first pages at least the same first pages as you gave this individual when he did come to pick up the death certificates?

A Would you repeat that?

Q Were the first pages of the certifications in the 29 series precisely the same first pages as you gave to this individual when he came to pick them up?

A Are those the same?

Q Yes.

A Well, they couldn't be because they don't have the seal.

Q Except for the change in the seal?

A Yes. Otherwise that is it.

Q I notice that the language on the front of the documents in the 29 series is different than the language

(Pause.)

Q Miss Bahrav, for how long did you see the person you have identified as the defendant on January 5, 1971?

A It might have been five to ten minutes.

Q How about on January 12, 1971?

A It must have been about the same.

Q And you saw him on how many occasions on January 12, 1971?

A Well, I saw him twice but as I said before I don't remember if he came the same day or later or the next day to pick up the things. I don't remember that.

Q And the total on the two occasions that you saw him on January 12th and 13th, how long did you see him?

A Probably ten minutes, ten minutes.

Q You say ten? Is that correct?

A I say yes. Maybe eight. I don't know.

MR. SCHATTEN: Thank you.

MR. COURT: Mr. Rosen. You may inquire.

CROSS EXAMINATION

BY MR. ROSEN:

Q Would you describe for his Honor and the jury what the man looked like who came into you with these death certificates on January 5, 1971? Describe him for

the jury.

A Well, in my memory he was on the fat side with black short hair and I would say a thick features, could you say, not fine (demonstrating).

Q Anything else stuck out in your mind?

A A yamulka.

Q A yamulka? That is a skull cap, right?

A Skull cap. That's it.

Q By the way, is it unusual for anybody with skull caps to come into the Israeli Consulate?

A No.

Q You see a lot of that every day, don't you?

A It is not unusual.

Q Anything else stick out in your mind about how the man looked?

A No.

Q I show you -- is it Miss or Mrs.?

A Miss.

Q I show you what has been marked Government's Exhibit 43-A and ask you if you recognize any of the handwriting on that document?

A Yes, I do.

Q Would you tell his Honor and the jury what handwriting you recognize?

Q Do you consider yourself as having a good memory?

A Pretty good.

Q Let's go back to January 1971. That is about four years ago?

A Yes.

Q January 5, 1971?

A Yes.

Q How many people did you see that day?

A I may have seen ten.

Q Can you give me the names?

A Of course not.

Q You couldn't give me the names of anybody, no?

A No.

Q Can you describe anybody?

A No.

Q That you saw that day?

A No.

Q Do you remember any conversations with anybody you had that day?

A No.

Q Is it not a fact that you know Mr. Slavinski, the Postal Inspector?

A If I know him?

Q For the first time you were over here a couple of months ago?

A Yes. Four months ago, five months ago.

Q That wasn't the first time you were in this building, was it?

A It was.

Q It was?

A Yes.

Q Well, when did you testify before the grand jury?

A What did I testify?

Q When.

A Four month ago.

Q Four months ago you testified before the grand jury?

I show you 3544 and ask you whether that refreshes your recollection when you were in this very building testifying before the grand jury.

MR. SCHATTEN: Are you testifying?

MR. ROSEN: Do you have an objection?

MR. SCHATTEN: Yes.

Q Does that refresh your recollection when you testified before the grand jury?

A Well, there is a date on it.

Q Yes.

Do you ever talk to him?

A Only in regard to the case, yes.

Q I didn't suggest anything else.

A Okay.

Q Have you talked to him about this case?

A Yes.

Q How many times?

A Well, three, I would say.

Q When was the first time you talked to him?

A A year and a half ago.

Q Where did you talk to him?

A In Mrs. Sivan's office.

Q Did he tell you --

A With Inspector Gray, I think. The two of them came there.

Q Did they ask you questions about Mr. Wolfish at that time?

A Yes.

Q Did you observe whether they ever took any notes or made any memorandums of your conversations?

A Well, they did mark something. I don't know what.

Q How about the second time you spoke to the

Inspector. Where did you speak to him?

A Well, they took me here once and then I testified before the grand jury and maybe I spoke on the phone with him. I might have spoken over the phone.

Q You don't recall that, though, do you?

MR. SCHATTEN: What are you referring to?

MR. ROSEN: How many times or what the conversation was.

Q Do you recall specifically what you talked about?

A Well, about the case.

Q Do you remember what you said?

A Yes, I guess so.

Q Did you see anybody take any notes?

A Well, I don't, couldn't see what, if he takes notes when we are on the phone.

Q No, I know.

How about when you were in person?

A Well, I told you, I remember him marking something down. I didn't look.

Q When for the first time did you talk to an Assistant United States Attorney, somebody who works in this building?

A Yes, they brought me over here a couple of months ago.

Q Well, does it refresh your recollection? Do you remember back then?

A Frankly, I wouldn't now even think it was a year and two month ago.

Q You have no trouble remembering what happened in 1971, is that correct?

A Would you repeat that?

MR. ROSEN: I'll withdraw the question.

Q I'll ask you again:

When for the first time did you speak to an Assistant United States Attorney, somebody like Mr. Schatten or somebody --

A You asked me once and I replied and must be I didn't remember correctly.

MR. ROSEN: If we have an answer, I'll accept it but I don't recall the answer.

A I said a couple of months ago.

Q At that time did you discuss in any way whatsoever what the defendant looked like?

A I believe so.

Q What did Mr. Schatten tell you about the defendant's physical appearance?

A Nothing.

Q What did you tell him?

A What I told her, that he was fat and had black short hair and the yamulka.

Q I am sorry -- and the yamulka.

No question about that, right?

A No.

Q Did you ever tell Mr. Slavinski or anybody else in the whole world that the man that came in to see you in January 1971 was depicted as having a full black beard?

A I said I couldn't remember if he had a beard or not.

Q You said you couldn't remember.

Did you ever tell anybody that Louis Wolfish had a beard in January of 1971?

A I said I couldn't remember if he had a beard. I remember someone asked me. I don't remember who, if he had a beard and I said I couldn't remember if he had a beard.

Q Did you ever point out Louis Wolfish as having a beard in 1971?

A I don't think so.

Q I show you 3544 and I ask you to look through that. I think it may be the second or third page, so we don't waste too much time and maybe that will

refresh your recollection as to your testimony as to the appearance of the man that came to you in 1971.

I think it is the third or fourth page.

A I don't find it.

Maybe you can point it to me. I can't find it.

Q All right.

Oh, here is something.

Q Okay. Take a look at that portion of it and see --

MR. SCHATTEN: What page is that?

Q What page is it?

MR. ROSEN: She is on page MPC5.

A I am sorry. I don't see anything about the beard.

Q Well, reading that page, does it bring back anything to your mind about referring in any way to that man as having a big heavy beard or any beard?

A Maybe I said he had it and then I thought he didn't. I remember I couldn't remember if he had a beard. that is all.

(Photograph marked Defendant's Exhibit K for identification.)

xx

Q I show you what is now marked Defendant's Exhibit K for identification.

A Oh, I remember now. Then they asked me if he had a beard at the time that he came to see me and I said I didn't remember.

THE COURT: Read the answer back, please.

(Record read.)

Q Do you want to change your testimony that you gave a little while ago that the man that came to see you did not have a beard?

A Do I want to change it?

Q Yes.

A I still don't remember.

Q Did you say to this jury a little while ago that you didn't remember or that he didn't have a beard?

A I said I didn't remember if he had a beard.

Q Mrs. Bahrav, I show you what is marked 28-C-1, and I ask you whether --

A Would you take this from me, please?

Q Yes, ma'am.

I ask you whether the entries on that page are in your handwriting?

A Yes.

Q Would you tell his Honor and the jury whether the name Louis Wolfish appears anywhere on that page?

A Isidore Wolfish.

Q I didn't ask you that.

A No.

Q Is it your testimony that that was a mistake, yes or no, please?

A Yes.

Q Did you make any other mistakes?

A I think so.

Q You mean Isidore Wolfish could have been there, then?

A I didn't ask, I never asked the name of the man who was there.

The -- the name that I put here was always the name of the person whose name was on the certificate, whatever I was doing was issued and Isidore is the name of the father on the third line so I assume I was mistaken and I put the father's name instead of the guy's name.

Q Did you ever make that mistake again, to your knowledge?

A How can I know?

Q All right. Let's see if we can help you.

By the way, how much did you charge that individual for whatever services you performed?

A It is marked right here.

Q Where is that?

MR. ROSEN: I can do that at a hearing, your Honor.

THE COURT: I daresay that you may well have a handwriting expert who will state that it is certainly desirable and preferable to work from originals rather than photocopies, but, in the final analysis, I can imagine such an expert saying that, in the final analysis an expert could not very well testify that you could not work from good photocopies.

Photocopies may not be as good as the originals but the ultimate question is, are the photocopies good enough to work from.

In other words, how fine and demanding is the work that must be studied and if in this case it is shown that it is very fine and very demanding and you manage to elicit that, all right. In the first place, you have the opportunity to bring that to the attention of the jury and on the question of what weight they attach to the government's testimony about these documents, this could be highly important.

It isn't that you have no opportunity to bring all of this out for whatever benefit you can achieve from it with the jury.

Further, we shouldn't lose sight of the fact

that, while the jury may not get to see that note which the government through Major Halpern says was retrieved from the police file in Israel bearing the name of one Marcia Wolfish, in which she asked for the return of photocopies, in that case, and certain documents and we do know that there is testimony that Mrs. Wolfish even went to court to get her documents returned and I don't imagine there is any denial that what Major Halpern says occurred did occur -- namely, that he returned other documents voluntarily -- and all of that to say that for purposes of this hearing, which I suppose we could say this is, there has been no showing that the defendant and his wife were not still husband and wife enjoying that relationship; there has been no showing of estrangement of the type which would suggest that whatever documents were returned to Mrs. Wolfish were therefore not returned to Mr. Wolfish at the same time.

There is at least room for inference that when the documents were returned to Mrs. Wolfish, they were returned to one member of a marital unit, and in returning them to her, they were returned to Mr. Wolfish, as well, and that, in any event, if they are separated, there has been no showing that Mrs. Wolfish's whereabouts are unknown.

#2 We know from the testimony that they have a number of children; I think it was six. There is no showing

where those children are. There is no showing that the defendant doesn't know where his children are, if they are with the mother and, consequently, there is no showing that your client can't reach his wife or former wife for the purpose of obtaining the originals which you seek.

MR. ROSEN: Well, your Honor, I don't disagree with anything you said. As a matter of fact, I am asking your Honor as a matter of law that the potential witness, Mrs. Tamir, that it be ruled that her testimony is inadmissible as a matter of law and she is an incompetent witness as a matter of law and my argument to the jury, all these little subtleties which I thank your Honor for suggesting some of them, isn't the answer.

I am making a motion as a matter of law and I think the law is as clear as can be, and I think your Honor should make a finding that these documents were in the custody, control of the government at one point, knowing they would call Mrs. Tamir and I think to let them slip out in any way -- maybe purposefully, I don't know, and I don't ascribe nefarious actions to Mr. Schatten, because I was in his seat for many, many years and there are all kinds of tactical things you are permitted to do -- and I think it renders this whole testimony incompetent and inadmissible and I say that it is the most grievous type of prejudice and

A If I remember who was in front of me?

Q Yes.

A No.

Q Looking at this document you cannot refresh your recollection in any way whatsoever? This is after the time that you testified to yesterday.

A No, this doesn't say.

Q Do you remember the defendant standing in front of you in October?

A No. I don't remember if he did. I don't remember if he didn't.

Q But you remember before that he was there?

A At that time when he came about the death certificate I paid particular attention to him because requests were very unusual. To come for a visa was very usual.

Q That is the point.

Would you look at Court Exhibit 9 and tell us whose passport this is.

A Louis Wolfish.

Q Does it show that he came in for certain visa purposes into the Israeli Consulate?

A Yes. The same date as the other visa.

Q And your handwriting is on that as well, isn't it?

A Yes.

Q Do you recall seeing him at that time, the day -- what is the date on that document, Miss Bahrav?

A October 21, 1971.

Q Do you have any recollection of that day whatsoever?

A No.

Q Do you remember him perhaps as the man who made the unusual request six months before that?

A I don't remember who brought this in.

Q I am asking you a question.

MR. SCHATTEN: I believe she answered the question.

MR. ROSEN: I will withdraw it and ask another question.

Q In October, 1971, did you talk to any man --

A October 1971.

Q Yes.

--about the results of what he had done back in January of that year? Did you make any inquiry?

A No.

Q But yet is it your testimony that you remember the defendant because of the unusual nature of his January requests?

A I stated the January requests were unusual, and I stated I thinkI remember him.

Q You think you remember him?

A Yesterday I said I think this was the man. I didn't say this was the man, I think this was ~~the man~~.

Q Would you indicate in Court's Exhibit 9 where your handwriting appears?

A The same as there. The whole page except the signature.

Q Would you just make an X, please. I am sorry, not an X, a check.

(Witness indicated.)

MR. ROSEN: I would like to offer at this time a page of an American passport -- as a matter of fact, I will offer the whole passport. I don't think there is that much relevancy to the whole thing.

MR. SCHATTEN: May I look at it, please?

MR. ROSEN: Sure.

THE COURT: You are offering the whole passport?

MR. ROSEN: Yes.

MR. SCHATTEN: No objection.

THE COURT: Received.

MR.ROSEN: I would like to make my offer the pages where this lady has put her handwriting. She hasn't identified anybody else's handwriting. I don't want to tear it out. I just want to offer it where she has made her identification of her handwriting. There is other hand-

249a

One, as the witness said is dated October 21, 1971, which is her handwriting, and one is October 25, 1971.

Q I would like to ask you again. Looking at these two exhibits, L-1 and L-2 in evidence, does that refresh your recollection as to how many times you say you saw the man you tapped on the shoulder yesterday?

A As I said before, I don't remember who brought those passports in.

Q Would it be fair and honest to say, Miss Bahrav, that independently you never could identify the man who you say came to you in January of 1971?

MR. SCHATTEN: I object, your Honor.

THE COURT: Just a moment. Read that question back to me, Mr. Reporter.

(Question read.)

THE COURT: Sustained as to form.

Q I will try to rephrase the question.

Is it not a fact that you made an identification of the man who came to you, who you say came to you in January 1971, after his appearance was suggested to you by Postal Inspector Lavinski?

A Well, not really. I was shown a couple of photographs and I picked him out.

Q How many photographs were you shown?

A I would say five, maybe.

Q Maybe six?

A Maybe six.

Q And was any one photograph pointed out to you specifically by anybody or suggested to you by anybody?

A Definitely not.

Q Were all the photographs basically similar?

A No. You mean of the same type of person?

Q Yes.

A No.

Q There was one that was different from all the rest, isn't that correct?

A What do you mean different? Everybody is different.

Q Well, let me try to rephrase it.

Withdrawn.

There was one photograph that had certain facial representations that were totally different than all the others, isn't that correct?

A I would say so, yes.

Q And anyone just quickly looking at all those photographs would see that distinction, isn't that correct?

A Yes.

Q And isn't it true that it was that photograph that was different from the others that you picked out

previously?

A Would you repeat that?

MR. ROSEN: Would you read it back?

(Question read.)

A Yes.

MR. ROSEN: I have nothing further of this witness.

MR. SCHATTEN: May I proceed, your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. SCHATTEN:

Q Miss Bahrav, I want to show you the documents in the 20 series together with documents 37 and 38. I also would like to refer you to the Xerox copy of 28-C.

Can you look at those documents and tell us how many death certificates were brought into your office and reflected on those documents on January 12, 1971?

A I counted them to 11.

Q How often in your experience was it that somebody would bring in 11 death certificates for certification?

A Never.

Q Is this the one and only time in your experience?

A I am afraid so. It was a very unusual number.

MR. ROSEN: Move to strike it. 11 is not an unusual

THE COURT: Just a moment. We will get these marked first.

(Defendant's Exhibits K-1 through K-6 marked for identification.)

xx

MR. SCHATTEN: I offer Court's Exhibit 9 and Defendant's Exhibit L in evidence, the entire document, the two passports.

THE COURT: Mr. Rosen, any objection?

MR. ROSEN: Certainly, your Honor. There is no relevance to anything else.

THE COURT: Aside from relevance, any other objection?

MR. ROSEN: I don't know. There is no foundation that has been laid this lady has anything else to do with these pieces of paper except that one piece of paper and which she testified was the only one she signed.

MR. ROSEN: I offer it under the doctrine of completeness.

THE COURT: Decision is reserved on the offer.

Q Miss Bahrav, I want to show you seven photographs. I am placing them in front of you face up.

Will you tell the Court and jury which photograph you selected when Mr. Slavi[illegible]ki and Mr. Gray showed them to you?

A K.

Q Were all those exhibits the same photographs that were shown to you at the time in question?

A I remember specifically this and this and this. This I don't remember.

Q You are indicating you do remember being shown specifically as well K-k, K-2, K-3, K-4, K-5, is that correct?

A Yes.

Q And you are not sure about K-6?

A I am not.

MR. SCHATTEN: I would offer all of these exhibits at this particular time. I am offering all the K exhibits at this time.

THE COURT: That is K-1 through K-6.

MR. SCHATTEN: Together with K.

MR. ROSEN: No objection.

(Defendant's Exhibits K, and K-1 through K-6 received in evidence.)

xx

Q Miss Bahrav, prior to selecting Government's Exhibit K, did Mr. Slavinski or Mr. Gray, or anybody else, indicate to you which photograph you were supposed to select?

A No. Certainly not.

Q Did you select Defendant's Exhibit K in evidence

A I suppose so, yes.

Q What did they tell you to do? Did they tell you to mark the back of the picture, pick it up, or what?

A I was supposed to indicate it and I don't remember -- maybe mark it. I don't remember. I think so.

Q As a matter of fact, I show you Defendant's K and are your initials not on the back of that?

A Oh, yes, mine, yes.

Q That is when you were given the job of trying to figure out the man that you saw in January, right?

A Yes.

MR. ROSEN: Your Honor, I would just like to make available to the jury, so that they can see at this point the way the government had the witness select the picture.

Q Is it your testimony, Mrs. Bahrav, that there was nothing suggestive about this procedure?

A You are asking my opinion?

Q Yes, ma'am, that is correct. What is your opinion? Do you think that they were --

MR. SCHATTEN: I object, your Honor.

THE COURT: Sustained.

Q In your own mind, when you selected the picture, were you assisted because of the dissimilarity in the photo-

graphs?

A Well, it's very hard to say how the human mind works, but it might have been; I don't know.

MR. ROSEN: No further questions.

REDIRECT EXAMINATION

xvxvx

BY MR. SCHATTEN:

Q In your selection of Defendant's Exhibit K, did you select Defendant's Exhibit K because that was the man you saw on January 5, 1971?

A Because I thought that was the man I saw. Of course. Otherwise, I wouldn't have selected him.

Q Otherwise, you wouldn't have selected him, is that correct?

A Of course.

Q Is that true about January 12, 1971, as well?

A Well, it was definitely the same man. No question at all about that.

MR. SCHATTEN: No further questions.

MR. ROSEN: Nothing.

THE COURT: On the offer of the passports, counsel, would you step inside the robing room for a moment and I will make a ruling when I come out.

THE WITNESS: May I leave?

THE COURT: You'd better remain just a few

RECROSS EXAMINATION

'xvx

BY MR. ROSEN:

Q Mrs. Bahran, when was the first time in your whole life you saw this picture?

A I don't remember the date, but I saw the date on it, as a matter of fact.

Q In other words, when you picked it out for the inspectors?

A Yes.

Q You never saw it before?

A The picture?

Q Yes.

A This picture?

Q Yes.

A No.

MR. ROSEN: That picture is Exhibit K.

Q Isn't it a fact that you saw it on October 21, 1971?

A You mean when I saw the passport?

Q No, no. Isn't it a fact that you saw this face, this picture, on October 21, 1971?

A When I saw the passport.

Q Can you answer me yes or no? Isn't it a fact that you saw --

MR. SCHATTEN: Do we have a question on the record? The procedure, I understand, if he wants the question reread --

THE COURT: Counsel is rising to say the question has been answered.

MR. ROSEN: Idon't believe it has been answered. I wanted, if possible, a yes or no.

THE COURT: Proceed with the question.

Q Could you answer me yes or no?

A I saw the passport. I don't remember looking at the picture and thinking about it.

Q You don't remember looking at the picture and thinking about it.

Do you remember just looking at the picture and not thinking aboutit?

A When I see a passport, I open it like that and I look at the expiration date. At that time I glance at the picture.

Don't you expect me to say if I remember that I looked at thisparticular passport; all right?

Q Wasn't this the man that made the most unusual request that you have had in your Israeli Consulate career?

A Would you repeat?

MR. ROSEN: Mr. Reporter?

THE COURT: Well, read it back.

(Record read.)

A I may have been thinking about it then. I don't remember what I thought. I may have remembered it. Probably I did.

Q Do you have any question in your mind as you sit here today?

A No.

Q Any question that this is the same picture?

A No.

MR. ROSEN: I am talking about Defendant's K and that which is contained in Government Exhibit 55.

Nothing further.

THE COURT: May I see them a moment, please?

MR. ROSEN: Nothing further.

MR. SCHATTEN: I have nothing further.

MR. ROSEN: I would like the jury to see them both. I don't have to even pass them around, but I would like to take one second and show them.

This is what I am talking about (defense counsel exhibited Exhibits 55 and K to the jury.)

THE COURT: Anything further of this witness?

MR. SCHATTEN: Nothing.

MR. ROSEN: No, sir.

"With love, with many kisses, Eliezer Chaim."

Q How about Government's Exhibit 45-B? To whom is that letter addressed?

A Also to Mrs. Marcia Wolfish, and the address is in Hebrew letters, and the translation means Center of -- well, I don't know the word, where new immigrants are coming. I don't know the translation in English.

MR. ROSEN: Absorption Center. I will concede.

A Yes. The street is Barriochai 147-9 Katamon T., Jerusalem.

Q What is the return address on that letter?

A Wolfish, care of Horowitz, 25-10 30th Road, Astoria, New York, 11102.

Q And the salutation on that letter?

A "Dear Marcia and Children."

Q Also, is there an Eliezer Chaim at the conclusion of the letter, once again?

A Yes, Eliezer Chaim in Hebrew letters.

Q I want to show you what has been marked as Government Exhibits 30 and 31 in evidence.

Did you have occasion to examine these particular documents in the course of the examination you made?

A Yes, I have examined them.

Q Would you tell the court and jury what the nature

of the examination was that you performed?

A I have been asked if these two documents that means 30 and 31 -- were written by the same person and if they were identical.

Q What conclusions, if any, did you reach?

A My conclusion was that the handwriting in blue was written by the same person, the same contents, but they weren't exact copies, they weren't exactly identical.

Q Can you tell the Court and jury what differences you discerned between -- on the handwritten portions of Government's Exhibits 30 and 31?

A In the blue handwriting.

Q The blue handwriting you testified was exactly the same· is that correct?

A Yes, but not identical. It was the same, but not a copy. I mean not two copies.

Q The words were the same, but the letters were not exact copies, is that correct?

A Right.

Q How about the black pencilled handwriting?

A In Exhibit 30 there is a black pencil writing in Hebrew in the second, third and fifth lines.

Q Would you translate the black pencilled handwriting that appears on the second, third and fifth lines?

Q The white part?

A The white part. It shows the photography of the part of the pencil writing in Exhibit 30 as it is seen by the ordinary eye. The right side is a technique called infra red luminescence.

THE COURT: There could be some cultural difference as to left and right. Have the witness point to the portion she is talking about with reference to her explanation.

Q You are now referring to the darker portion, the darker half of Government's Exhibit 61 in evidence, is that correct?

A Yes. It is a technique called infra red luminescence which shows the ink which was erased underneath the words Eliezer Chaim and the word married in the fifth line.

Q And by using this technique what did you discover?

A I found that under the word Eliezer Chaim in the second line there was a name Rivka, which in English is Rebecca, and underneath the word "Married" in the fifth line was the Hebrew word "Almana" which is "Widow."

Q You took these photographs from Government's Exhibit 30, is that right?

A That's right.

Q That's the death certificate with the blue and

262a

a pen in thickness at least?

A In this respect?

Q On this very 53-A.

A Yes.

MR. ROSEN: I object, your Honor.

THE COURT: Overruled.

BY MR. SCHATTEN:

Q The question is, Mrs. Tamir, as I have asked you, did you come to a conclusion with respect to whose pencilled handwriting is on Government's Exhibit 31 in evidence. I am referring now only to the black pencilled handwriting in that exhibit?

A Mr. Wolfish's.

Q That is the person who you identify as the defendant, is that correct?

A Yes.

Q I want to show you what has been marked as Government's Exhibit 66, and I want to ask you, is this a chart that you prepared in order to illustrate your conclusion that Mr. Wolfish's pencilled handwriting is on Government's Exhibit 30 in evidence?

A Yes, this is a chart I made to show how I came to the conclusion it was written by Mr. Wolfish.

Q Will you tell how you prepared that particular

A The 3rd of October, 1974.

Q Which came first, the chart or the exemplars?

A The exemplars.

Q In other words, you took these exemplars, all these pages here were 53-A, before you made the chart?

A Yes.

Q And you didn't use these exemplars on this chart, is that your testimony?

A Yes, because the handwriting is disguised.

Q This handwriting is disguised?

A That's right.

MR. ROSEN: Your Honor, I move to strike the exemplars. If they are not going to represent --

THE COURT: Your motion is denied.

MR. SCHATTEN: May I proceed?

MR. ROSEN: Let me finish on this.

THE COURT: Wait until Mr. Rosen is finished.

Q So you are telling the jury that you made this known side on 66, Mrs. Tamir, from 45-A and B, right?

A Mainly, yes.

Q Did you make the known side from what I have in front of me, 45-A and B?

A Yes.

Q Didn't you make the known side from the originals

of 45-A and B?

A From the originals of 45-A and B.

Q But these are not the originals, are they, Mrs. Tamir?

A No, these are copies of the originals I have seen and I have made copies from the originals.

MR. ROSEN: Judge --

THE COURT: Let's see now. The side which is described as known, is that the side which reflects anything from 45-A and B?

THE WITNESS: Yes, from the originals I had at that time.

THE COURT: And what is on the side marked questione

THE WITNESS: The questioned document which is 30.

THE COURT: I see. Are you saying then that on the side marked known there is material from 45-A and B and also from the 53 series, being the exemplars?

THE WITNESS: No, only from 45-A and b.

THE COURT: I see. Fine. Thank you.

Q But, Mrs. Tamir, you didn't take anything from 45-A and B, did you?

A From the originals.

Q So this chart is inaccurate, is that not correct? Is there anything from 45-A and B that is right in front of

you?

A No, it is from the original side of 45-A and B.

MR. ROSEN: I move to strike this chart. There is absolutely nothing on this chart from 45-A and B as we know it in America today.

THE COURT: Is it your testimony that what you took from 45-A and B -- withdrawn.

Do you wish to inquire?

BY MR. SCHATTEN:

Q Is it your testimony that 45-A and B are copies of the original that you utilized in preparing the known side of Government's Exhibit 66 for identification?

A Yes, I photographed the Hebrew words of the letters, original letters, which now I see the copies, and which are marked 45-A and 45-B.

THE COURT: Do you have the originals?

THE WITNESS: I don't have the originals.

THE COURT: Do you object?

MR. ROSEN: I have another question to make another objection.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. ROSEN (Continuing):

Q Tell his Honor and the jury how the copies were

made of the originals?

A These?

Q Yes.

A I don't know.

Q Do you know if there was any difference in scale, if this was the exact --

A No.

Q You don't know that?

A This is a photocopy, the same scale.

MR. SCHATTEN: You are now referring to 45-A and B, is that correct?

THE WITNESS: Yes.

Q Mrs. Tamir, how do you know, for example, that 45-B is to the exact scale of its original?

A It is a photocopy, and as far as photocopies go it is more or less the same size. It may be a difference of a section of a millimeter, but not more.

Q Well, hasn't the science of handwriting come down to little differences that you could hardly see with the naked eye sometimes?

A But I have examined the originals.

Q Did you make this copy?

A I did not.

MR. ROSEN: Your Honor, I most respectfully press

MR. ROSEN: I respectfully except.

Q Would you proceed?

A When on October 3rd I dictated to Mr. Wolfish the contents of Exhibit 30 he wrote in a manner which showed me that is disguising his handwriting.

MR. ROSEN: Move to strike.

Q Kindly explain your answer.

MR. ROSEN: I move to strike the answer.

THE COURT: I will deny your motion at this time. You may renew it.

MR. ROSEN: Thank you, your Honor. I will wait.

A First I tried to dictate him full words, but he wouldn't write full words and asked me to spell each letter separately, so all along the dictation I spelled each letter separately.

Then he wrote in a fantastic form and start and wrote in a position to Hebrew writing. Hebrew writing is written from top to bottom. The letter starts on the bottom and goes to the bottom. But as Mr. Wolfish started his letters all at the bottm and went up like this. Could I demonstrate?

Q Yes.

We have a blackboard --

MR. ROSEN: I move to strike. I think it is highly prejudicial.

268a.

THE COURT: Overruled.

MR. SCHATTEN: May the witness proceed to the blackboard and show the Court and jury what she is testifying to?

THE COURT: Yes.

(At the blackboard.)

A The ordinary writing starts at the top and goes down. For instance, the letter H goes this way and then this way. Or the letter K, which appears in those charts. This is the direction.

Now, during the -- most of the letters. There are a few letters which start at the bottom, like this one.

(Indicating.)

Now, during the dictation Mr. Wolfish all the time changed directions. He wrote like this. And this letter like this.

(Indicating.)

And this letter like this.

(Indicating.)

Starting from the bottom and going upwards. It was his form of disguising.

MR. ROSEN: I move to strike.

THE COURT: I will grant the motion to strike the characterization that it was his -- the words used by the

witness, that it was his form to disguise the writing. I will grant your motion to strike the characterization. The jury will disregard the characterization.

MR. SCHATTEN: May I approach the side bar for a moment?

THE COURT: I think we can interrupt at this point. It is 12:25, and I told you we would break at 12:30.

We are going to resume --

MR. ROSEN: Would your Honor be kind enough to consider a 2:00 o'clock resumption?

THE COURT: Yes.

We will resume at 2:30.

Now, please do not talk about the case among yourselves. You have heard a lot of testimony this morning. There is more testimony to be heard, no doubt. You will recall that I told you that you must not form or express an opinion about the case until you have heard all of the evidence, and as far as I can see you haven't heard all of the evidence, so don't talk about the case among yourselves don't talk about it with anybody else, don't form or express an opinion about the case, and we will resume at 2:30.

(Jury excused.)

(In open court, jury not present.)

MR. SCHATTEN: I would like to hand to Mr. Rosen a copy, and the Court the original, of a very short memorandum on this subject. I am referring now to the Second Court of Appeals decision in U.S. versus Izzi which points out if an accused were free to disguise his handwriting by writing the requested words in black capitals or with his opposite hand without fear of any sanction exemplars would be worthless and there is authorization to compel their execution granted by the Gilbert case.

Izzi further points out if Gilbert versus Callif is not to be rendered meaningless the Government must be allowed to explain differences between the exemplars and the signatures sought to be identified, particularly where the defense points to these differences as evidence of non-common authorship.

THE COURT: Isn't that exactly what you have been allowed to do by the witness being allowed to go to the blackboard to explain "differences"?

MR. SCHATTEN: Yes.

THE COURT: What I have not allowed is the witness' characterization, because that introduces other factors into the picture, motivation, and so forth.

MR. SCHATTEN: Very well, your Honor.

THE COURT: I know you would have the jury

271a

conclude from the testimony the handwriting is disguised, but I will not allow the characterization because it is conclusory.

MR. ROSEN: I think what the Government has tried to demonstrate in this courtroom requires a mistrial, your Honor, for one specific reason. Your Honor ordered these handwriting exemplars on the basis of Mr. Schatten's sworn representation that they needed more at the time before your Honor in July.

Now, they take the defendant down to the Post Office and they put him through three or four hours of all this with this lady sitting there and other Postal Inspectors like Mr. Slavinski and his colleagues,and if they believe the defendant is subverting the Court's order in any way and don't come to this court and make that charge they can't spring it on the trial and have this lady get to the blackboard, your Honor, because I write like a chicken, I write almost everything backwards, I write my A's from the bottom, that's the way they taught me, and to suggest -- I know your Honor was very mindful about striking the characterizationbut this lady left no doubt she thinks the rabbi had completely falsified his handwriting.

THE COURT: May I point out that while you may

not have intended to elicit it was during your examination of the witness that that first emerged.

MR. ROSEN: Fine. But, your Honor, the Government introduces these documents, the 53-A series, to your Honor as a document that they vouch for, the same way that they vouch --

MR. SCHATTEN: I don't --

MR. ROSEN: Excuse me -- the same way they vouch for a witness' veracity. They make no indication they think these are phony.

THE COURT: The only thing they need vouch for is that those -- counsel, let that be the last time in my courtroom you ever throw papers at another lawyer.

MR. ROSEN: I'm sorry, your Honor, I apologize.

THE COURT: I consider that utterly offensive. Please don't do that again.

MR. ROSEN: I apologize.

THE COURT: All they need vouch for in my view is that the writing which appears on the exemplars marked the 53 series was writing which was actually done -- that is, written -- pursuant to the Court's order. And that's what the witness has testified to. She said she was there, she told him what to write, and this is what he wrote.

She has gone further. Mr. Rosen, I say again that

MR. ROSEN: I have no objection to Chart 4 and Chart 3, if the government is going to do it.

THE COURT: Whatever he chooses to furnish is up to him; he is the prosecutor.

MR. ROSEN: I guess you are right, your Honor.

Would your Honor entertain a motion to reopen the voir dire for one question which I forgot to ask, which might cause your Honor to reconsider your ruling and which I represent I think is a very important question?

THE COURT: I will hear it up here first.

(At the side bar.)

MR. ROSEN: Sorry, Judge. I wanted to ask how she knows that this is Louis Wolfish's writing.

THE COURT: I will allow it.

(In the presence of the jury.)

THE COURT: The application is granted. Proceed.

VOIR DIRE EXAMINATION

BY MR. ROSEN:

Q I show you 45B and you have 45A, I take it, in front of you, am I right?

A Yes.

Q How do you know 45A and B are written by Louis Wolfish?

A I received it from Major Halpern as random hand-

writing by Louis Wolfish.

Q Did you see the man sitting at the defense table write any of the words on 45A and B?

A No.

THE COURT: Are you referring to the originals of what A and B are said to be photographs or photocopies of?

MR. ROSEN: Yes, your Honor. I don't know if they are xeroxes or photographs.

THE COURT: You testified those were photocopies, did you not?

THE WITNESS: Yes.

THE COURT: You are referring to the originals of which they are photocopies.

Q Did you see anybody write the originals of 45A and B?

A No.

Q Had you ever seen Louis Wolfish write before he wrote in your presence October --

A No.

Q Let me finish the question -- in October of 1974.

A No.

Q So you don't know of your own personal knowledge whether 45A and B are in fact written or ~~were~~ in fact written by Louis Wolfish, do you?

A I haven't seen him write them.

MR. ROSEN: Renew the objection, your Honor.

MR. SCHATTEN: Your Honor --

THE COURT: Do you wish to inquire further?

MR. SCHATTEN: No. It's a perfectly ridiculous objection.

THE COURT: Do you wish to inquire further? The characterization is hardly helpful.

MR. SCHATTEN: No.

THE COURT: Overruled.

CONTINUED DIRECT EXAMINATION

BY MR. SCHATTEN:

Q Did you make any analysis with respect to requested writing, that is, the writing done by Louis Wolfish on October 3, 1974, in the U. S. Postal Inspection Service and the random writings taken from Government Exhibits 45A and 45B, namely, the originals?

Did you make any analysis of that writing?

A No. The requested writing, I seen that they were writing in an utterly unnatural way of writing Hebrew characters.

For instance, I would like to point out a letter in the 53A --

Q Would you cover that portion of the document?

Government's Exhibit 30, is that correct?

A Yes.

Q Would you indicate that at the bottom of the questioned writing?

THE COURT: What does the witness say the known comes from?

Q What exhibits do the known come from?

A 45-A and 45-B.

MR. SCHATTEN: With the Court's permission I would like to hand out copies of the chart, Government's Exhibit 66 in evidence, to the jury.

THE COURT: All right.

MR. ROSEN: Will your Honor ask the other to retrieve the other one not in evidence, if your Honor please.

MR. SCHATTEN: They are all in evidence.

THE COURT: They are all in evidence.

MR. SCHATTEN: These might be helpful for the purpose of clarity.

(Exhibits handed to the jury.)

Q Would you show us on Government's Exhibit 66 where the questioned portion of that document came from?

A On the questioned, which is Exhibit 30, the first line comes from the second line on 30.

Q What were those Hebrew words?

you made of the documents in 45-A and 45-B in comparison with the writings that you took from Government's Exhibit 30, namely, the death certificate with the words "Louis R. Wolfish," and the black pencilled writing thereon?

A I have examined and studied the handwriting on Exhibit 30, namely, the death certificate. I have studied the pencil writing, and I studied it for its handwriting characteristics and features, and I have studied the handwriting characteristics and features of the Hebrew handwriting appearing on Exhibit 45-A and 45-B, and I have found agreement and corresponding -- correspondence between the features and characteristics between the two.

THE COURT: Before you go further, I hesitate to interrupt you, but I think we better clarify one thing. There has been reference with regard to 66 in evidence to that which is known, and there has been reference to that which is questioned. Questioned speaks for itself.

I think you better clarify what you mean by known before we proceed any further. Known as what?

Q What does the word known refer to as used on Government's Exhibit 66 in evidence?

A By known I am referring to exemplars given, exemplar of the writer.

Q Now, I am asking you, for purposes of Government's

Exhibit 66, the word known means, does it not, that those particular documents came, did they not, from Government's Exhibits 45-A and 45-B, namely, the originals, is that correct?

A That's right.

Q And that is what known means for purposes here, is that correct?

A Yes.

MR. ROSEN: I move to strike, your Honor. That is not what known means legally.

THE COURT: As long as he clarifies for everybody here what known means, as long as there is an understanding as to how he is using the word known, he can proceed.

Q Once again, so that it is clear to the Court --

THE COURT: Known means taken from 45-A and 45-B, and that is all you are saying, is that right, sir, through your witness?

Q Is that all you are saying, Mrs. Tamir?

A On this chart 45-A and 45-B, yes.

THE COURT: It means taken from 45-A and 45-B.

MR. SCHATTEN: So the record is clear, 45-A once again is the letter from Wolfish --

THE COURT: From somebody ehose name was Wolfish.

MR. SCHATTEN: From somebody whose name is Wolfish

Q Did you make a similar comparison with the other letters indicated on Government's Exhibit 66?

A Yes. The other letters are in the same slant. It is only this one letter L whose slant is in the opposite direction.

Q And what is your conclusion with respect to the writings on Government Exhibit 66?

A I didn't understand.

Q What was the conclusion as to the author of Government's Exhibit 30, the black penciled writings on Government's Exhibit 30?

A Yes, I found that it was written by Mr. Louis Wolfish.

MR. SCHATTEN: I have no further questions, your Honor.

MR. ROSEN: I move to strike the entire testimony of this witness, your Honor-

THE COURT: The last answer is stricken in its present form. You may inquire again, if you wish to.

BY MR. SCHATTEN:

Q Is it your conclusion, Mrs. Tamir, that the person who wrote the letters, copies of which are in evidence as Government's Exhibits 45 A and B, was one and the same individual as the person who put the black penciled writing

on the death certificate that is marked in evidence as Government's Exhibit 30?

A Yes.

MR. SCHATTEN: No further questions.

CROSS EXAMINATION

BY MR. ROSEN:

Q Mrs. Tamir, who is the person who wrote 45 A and B?

A I don't know.

MR. ROSEN: I move to strike her entire testimony.

THE COURT: Your application is denied.

MR. SCHATTEN: Your Honor, this might be a good point to approach the side bar with one brief matter. It won't take us very long.

(At the side bar.)

THE COURT: Let the record show that I have deliberately not intervened during the last portion of this witness' testimony in an effort to make the record comprehensible as to what the witness was describing, because I feel that I have intervened more than enough already in order to make this record meaningful. So if it is incomprehensible, and if it reflects my failure to lead, that failure is deliberate on my part.

A Only part of it.

Q What part do you agree with, and what part do you disagree with?

A It is better to have the original. If I examine -- if I have to examine a paper and ink, I naturally have to have the original, so in cases of examination of paper and ink and paper fibers I have to have the original. In this respect I agree. But if it is a question of comparison of handwriting, since this book was written there has been developed optical and photographical means that have developed and now today it is agreed by most document examiners handwriting can be compared and identified on photographs and photocopies, if they are good.

Q Let me ask you something about pressure. You know a little about pressure, don't you?

A Yes.

Q Pressure is that aount of force that the person expends on paper, how hard he presses down or not, am I right, generally?

A Yes, generally.

Q Is there any way in the world that you can tell from the photocopies that are sitting in front of you what type of pressure was exerted by the writer?

that correct?

A Yes, of course.

Q What about a person who may know how to write Hebrew but was taught how to write in America?

A What is the question?

Q Would he write the same as, let's say, an Israeli or someone who learned in Israel?

A The Hebrew alphabet is taught similarly in all the western countries, including America. There is a slight difference from the Hebrew taught in Arabic countries.

Q If I wrote my name on the blackboard now, and I wrote it again let's say at five o'clock, an hour and fifteen minutes from now, would there be similarities, you would think, assuming I am not trying to disguise anything? Would you say there would be similarities?

A Maybe, yes.

Q There also could be dissimilarities?

A Maybe.

Q I ask you to pick up Exhibit 66. Okay?

A Yes.

Q Now, do I understand the questioned, the column called questioned, comes from that death certificate, Exhibit 30; right?

A Yes.

A Yes.

MR. SCHATTEN: Can we have a statement from counsel pursuant to United States v. Gardner, please?

MR. ROSEN: I am working from a paper that the government gave me.

Q Mrs. Tamir, did you say that you did mention in that report that on October 3, 1974, Mr. Wolfish gave you these exemplars?

A Yes.

Q To whom was that report made?

A I sent this report to Mr. Schatten.

Q Mr. Schatten of the U. S. Attorney's Office?

A Yes.

Q And in that report -- and I ask you to look at it -- did you in any place say that the defendant was disguising his handwriting?

A No.

Q That is something that you have come up with since November 1974, isn't it?

A No, this is what I saw when I dictated him.

Q But you did not put that in any report at all?

A No.

Q Yet, based on that, you have changed your position from your report of 1972; isn't that correct?

Q And did you also examine a typewriter that was given to you by Major Halpern?

A I received also a typewriter.

Q Do you know whose typewriter it was?

A I don't know whose typewriter it was.

Q Did Major Halpern ask you to conduct some tests on that typewriter, to see whether you could identify who typed on there?

A Yes, not who typed.

I was asked to examine the typewriting which appears on Exhibit 30 with this typewriter and it wasn't typed by the same typewriter.

Q That was not the typewriter?

A No.

Q Now, the background of those questions before you, do you see what in this exhibit either is accurately translated or is badly translated?

A I remember one point which was badly translated, namely, in my Hebrew report I used the words karov levadai, which means nearly - very nearly to. That means I went-- it stated that very nearly to the questioned writing on Exhibit 30 was written by Louis Wolfish, whereas as I remember it in the translation, it was stated that -- I found a similarity between the pencil additions and

alterations and tne handwriting samples in the name of Wolfish and most similar-- and most similar were written by him.

Well, it is a wrong translation of what I had written in my report.

Q So, in either event, in your report or the translation, you made no firm, positive identification, did you?

A Not firm, no positive identification.

Q But now you have made a firm identification in your own opinion, right?

A Yes.

Q And that was based, you say, on writings which you claim are not the true handwriting of Mr. Wolfish?

A Yes. Not natural. Not natural.

Q I wanted to ask you about that.

What is "natural" in handwriting?

A The natural handwriting is the spontaneous, flowing handwriting.

Q Spontaneous and flowing?

A Yes.

Q In all of your years of experience how many times have youundertaken to obtain handwriting exemplars from people?

A Quite a lot of times.

Q More than ten, would you say?

A Oh, yes.

Q More than a hundred times?

A Yes.

Q More than two hundred times?

A Yes. I don't know it.

Q Okay.

So you have got a lot of experience in obtaining exemplars and I am not sure that you completed your answer in describing the scene, how you obtained 53, Exhibit 53.

Would you tell us how many people were present on that day in October?

A As far as I remember, Mr. -- Inspector Gray was present and there was anotherman present but I am not quite sure who he was.

Q Well, he was a government agent, wasn't he?

A I suppose so.

Q And yourself?

A And myself.

Q And were you in one room?

A Yes.

Q Was the room as big as this?

A Yes, something like this.

Q And for how long a period of time were you directing the defendant to provide this handwriting?

A Oh, it took about one-half, maybe a little more hours.

Q How many breaks were there?

A There was no break.

Q No break?

A No.

Q And in your experience, have you found that people under such circumstances have normal, natural type of handwriting or could the situation, the stress, affect their handwriting?

A In my experience, stress may affect handwriting.

Q Thank you.

A But --

Q I'm sorry. I thought you were finished.

A But in this matter it wasn't stress; it was a deliberate disguise of handwriting.

Q Who taught you to say that, Mrs. Tamir?

A Nobody.

Q Let me ask you something:

You are working for the Israeli Police, even now, are you not?

A Yes.

Q Who paid for you to come over here to testify?

A I suppose the Government of the United States.

Q And you knew that you were coming over here back in July or even earlier, July of 1974, isn't that correct?

A Only in July, yes.

Q Isn't it a fact that you told the Government that you needed more samples of the defendant's handwriting?

A That's right.

Q And it was your suggestion to Mr. Schatten that he ask his Honor or the judge to get more handwriting?

A It wasn't my suggestions. I said that if I had dictated requested handwriting maybe I would come to more quickly a conclusion.

Q You wanted to come to a conclusion identifying Mr.Wolfish, didn't you?

MR. SCHATTEN: I object, your Honor.

THE COURT: No. She may answer the question.

A I don't-- I did not want to come. I just said that if I had requested handwriting where, where there appears the words and the combination of letters in words as they appear in the questioned documents, maybe I would come to a more conclusive answer because the letters I had, 45A and 45B, were Hebrew words but they are not in the same combination of letters as the questioned document.

289a

jbcg

UNITED STATES OF AMERICA,

vs.

73 Cr. 1036

LOUIS R. WOLFISH

January 15, 1975

(Trial resumed at 10 A.M.)

(Jury not present.)

MR. SCHATTEN: Your Honor, I just wanted to let the record indicate that I recall that during Mrs. Bahrav's testimony she indicated that there were some scratchings made by Mr. Gray, or words to that effect, on Government's Exhibit K in evidence and it reflects the only scratchings of Mr. Gray that I know of. That is, of course, the defendant's photograph in evidence.

I showed them to him before I even began my direct examination of the witness, Eva Bahrav. I wanted the record to indicate that. Nothing further.

MR. ROSEN: Your Honor, I apologize for being a little late. The Lexington Avenue subway this morning crawled.

Judge, at this time, and again I am apologizing for sort of being a little late in some of these requests, but I am trying to catch up with myself -- I would like to move to strike the testimony of Mrs. Bahrav, the young lady from the

Israeli Consulate, based on the language of the Supreme Court in Simmons versus the United States, 390 U.S. 377; 88 Supreme Court 967, 19 Lawyer's Edition 2nd 12-47.

I must say to your Honor that my motion is based on what I consider clearly, and I think the Court may have recognized it, at a hearing at page 608 of the transcript here, that we have had some impermissably suggestive tactics on the part of the prosecutor.

The Supreme Court held that convictions based on eyewitness identification at trial following a pretrial identification by photographs will be set aside on that ground only if the photographic procedure was so impermissably suggestive as to give rise to a very substantial likelihood of irreferable mis-identification.

I would like to couple my motion with two observations:

Beginning at page 608, if your Honor will recall we had a little robing room conference where your Honor did make reference to the fact that the government could not use the pictures affirmatively or should not use the pictures, I believe, affirmatively.

THE COURT: As they apparently intended at that time.

MR. ROSEN: Yes, sir, sure. I realize I used the

pictures but I don't think that changes the basic premise that we had one man with a beard and the others who were clean shaven except for one with a little stubble and I think your Honor made a very cogent comment, when you asked the U. S. Attorney if the situation would be different if they were all black and just one white, but, I think coupled with Mrs. Bahrav's testimony which I have just had a chance to check, I think on cross she continues to waver between an identification and the words "I think so."

I think the record is quite clear that she said to me on cross, "I think so," of when I asked her if the defendant was the same man who came in in January.

Under the Simmons case, I don't think that there is much to argue. I think the holding is clear. I think what we do have here was an impermissibly suggestive situation with Mrs. Bahrav. I think what developed in the robing room and here in the courtroom, as well, when Mrs. Bahrav did indicate, obliquely, at best, that, "Well, you know how the human mind works."

I think to that extent that is what the lady said when I asked her whether she felt she was being guided or pointed to a certain identification. I believe she said something about how the human mind functions.

I think, Judge, since the testimony is rather

typical, I think your Honor is required under Simmons to strike this lady's identification in court and to, I believe, strike her whole testimony.

THE COURT: I'll hear from you, Mr. Schatten.

MR.SCHATTEN: Thank you, your Honor.

The Second Circuit Court of Appeals in a number of recent cases which I have cited to the court previously, and again I am confronted, quite honestly, with surprise by Mr. Rosen here, the cases are ex rel Gonzalez versus Zelker, Phipps versus Follett, United States versus Yanashevsky.

Even assuming arguendo that there is suggested spread, I must say that the witness testified that at no point did any government official indicate any person or photograph thatthe witness should select.

Those cases indicate that the test is twofold:

First, is there a suggestive spread, and,second, is it the suggestive spread which forms the basis of the witness' testimony or is the witness testifying on the basis of her opportunity to observe the defendant in the situation.

THE COURT: I assume that you are clearly proceeding under the second.

MR. SCHATTEN: Yes, that is correct, although I must say the situation here is far far less suggestive than the situation in Phipps versus Follett or Gonzalez versus

jbcg

Zelker. Both of those cases was one or two photographs being shown. Here we have a spread. People can quarrel about the spread and, I must say, let me proceed under the second test.

The witness testified she saw the man for approximately 20 to 30 minutes in the address on the three occasions. He was seated right across the desk from her. The area was well lit and she testified on redirect examination and I am reading, "In your selection of Defendant's Exhibit K" -- that's the defendant's photograph -- "did you select Defendant's Exhibit K because that was the man you saw on January 5, 1971?

"A. Because I thought that that was the man I saw. Of course. Otherwise, Iwouldn't have selected him.

"Q. Otherwise, you wouldn't have selected him, is that correct?

"A. That is correct.

"Q. Is that true about January 12, 1971, as well?

"A. Well, it was definitely the same man. No question about that at all."

And I think it is perfectly clear from her testimony that she is testifying based on her recollection of having seen the defendant on those occasions.

Counsel, of course, is free to bring out whatever items that he wanted on cross-examination under the circum-

stances. She was testifying from a clearly sufficient opportunity to observe. If you would match this case against the other cases, and my recollection of some of the cases were that there were opportunities to observe for less than a minute, I think it's crystal clear that this witness was perfectly competent to testify.

1-2 MR. ROSEN: Your Honor, I wanted to make one comment. I think your Honor, at page 609 of the record asked Mr. Schatten the question:

"Why would this not be suggestive?"

MR. Schatten went on to actually not give the Court any answer, I believe, to that direct question and I direct your Honor's attention to pages 609, 610, 610a and 611. On page 611 your Honor again asks Mr. Schatten, "Are you telling us that she could make an identification of the defendant independently of the photographs?"

Mr. Schatten answered, "Yes, your Honor."

I don't think that question was put to the witness in that form -- could she make it independently.

I do want to recall --

THE COURT: The question was not put by anybody; is that your point?

MR. ROSEN: Yes. The only other thing I would like to do is call your attention to page 700 of the record where,

on cross-examination, I asked Mrs. Bahrav a question and she answered, "Yesterday, I said I think this was the man. I didn't say this was the man. I think this was the man."

THE COURT: I recall that.

MR. ROSEN: I think, your Honor, with all due respect, the record is clear as to the spread. To your Honor's even preliminary findings or suggestion to the U. S. Attorney that the procedures might have been suggestive and based on the equivocal testimony of Mrs. Bahrav and the lack and failure of the prosecutor to bring forth that there was nothing suggestive and failure to ask the question your Honor posed, her testimony should be stricken from the record.

THE COURT: Well, I deny the motion.

MR. ROSEN: Respectfully except.

THE COURT: I find there were sufficient opportunities to observe the person she had identified. She says that she observed the individual on three different occasions. It ran, according to her testimony, over a number of minutes, perhaps totallying 20.

She not only was questinned closely about these matters on direct and then on cross and then redirect and then recross, but, you will recall that she offered additionally an explanation as to why she would have a recollection of this individual as against recalling who it was who

presented the passports in question or, for that matter, recognizing anybody else who comes in the normal course of events each day.

She indicated that it was highly unusual -- perhaps she just used the word unusual -- for someone to come in with eight different death --

MR. SCHATTEN: Eleven, I think is the number, your Honor.

THE COURT: Eleven death certificates, and to ask for certification and to question her closely about the procedure for certifying or preparing or whatever the death certificates, so that added altogether it simply satisfies me that there is sufficient for me to deny your application.

Now, I do have a matter I am going to ask Mr. Schatten to address himself to at a later point.

I have made some rulings which represented the receipt of evidence subject to connection. I am not at all sure that all of them had to be received subject to connection or that all that should have been received subject to connection were.

In any event, Government Exhibits 9 in evidence was received subject to connection; also 16 and 17 and 19 and 21, and I mean to embrace all of the alphabetical categories, and that is all I have marked, if I have caught them all.

forms, 21-A and 21-B.

His connection is clearly established and it is probative.

Turning to 45-A and B, the letters, I believe those are the documents the Court asked me to respond on.

These are both letters the originals of which were found by Major Halpern during the search of Mr. Wolfish's home at 4 Mewo Timna Street in Jerusalem. I think Mr. Wolfish's connection to that address is established not only from Major Halpern's testimony, but there is a passport in evidence --

THE COURT: How is it established by Major Halpern's testimony.

MR. SCHATTEN: He testified he telephoned that phone number and spoke to Mr. Wolfish at that address. Also there is the passport of Mr. Wolfish the front page of which shows the 4 Mewo Timna address as being the defendant's foreign address.

The defendants link to that address is established. The letter is written to "Dear Marcia and children." The return address on each of those envelopes has the Horowitz' address, 25-10 30th Road, Astoria, New York. At the top is the name "Wolfish." Both letters are addressed to Mrs. Marcia Wolfish. There has been a lot of testimony indicating

the defendant's wife's name was Marcia, and the defendant's name of course is Louis Wolfish, and there has been testimony, further, that Mr. Wolfish, both from Mr. Horowitz and the carrier, Mr. Lisio, indicating that Mr. Wolfish did on occasion stay at the Horowitz' address and therefore as a matter of reasonable probability to the jury -- I mean in this connection I would like to refer the Court to such case as Gass versus United States, 416 F. 2nd 767, a District of Columbia Circuit case in 1969, which indicates that the rule establishing connection to a defendant or an offense demands that the possibilities of misidentification and adulteration be eliminated not absolutely but as a matter of reasonable probability.

The Second Circuit adopted that test in a case called United States versus Lavin, 480, Fed. 2nd 657, 662, Second Circuit 1973, which pointed out that in the final analysis the determination of whether that reliability exists must be left to the sound discretion of the trial judge.

Each of those letters, I might add, is signed by the name Eliezer Chaim, which if you have a look at Government's Exhibit 30, namely, the death certificate that has been testified to by the handwriting expert, and others, is the Hebrew translation of Mr. Wolfish's English name

mdrf 6

Louis R.

You will recall, in fact, on Government's Exhibit 30 there was testimony from Major Halpern, if you look at it you see the name Louis R. and then in Hebrew the name Eliezer Chaim, therefore making it even more of a reasonable probability.

THE COURT: Maybe Mrs. Wolfish wrote it herself.

MR. SCHATTEN: I appreciate the Court's point, but I must say with all due respect that the test demands only that the matters be eliminated as a matter of reasonable probability not absolutely. I might further add that one of the dates on those letters is January 23, 1971, a date only a few short days after Mr. Wolfish was identified at the Israeli Consulate, further corroborating the likelihood that he wrote that particular letter at least, and the Second Circuit has made clear the possibilities of misidentification and adulteration be eliminated not absolutely but as a matter of reasonable probability.

THE COURT: What do you suppose they mean by misidentification?

MR. SCHATTEN: And adulteration.

I would assume what is meant is if there is a highly substantial likelihood if anybody other than the defendant wrote these letters then we would have a problem.

But these are letters of a personal nature --

THE COURT: Don't you have a problem? Doesn't logic and reason suggest that if indeed this were a scheme devised by someone other than defendant that in all likelihood they would try to develop it in the fashion in which it has occurred here. You wouldn't pick my name to sign at the end of the letter, you would pick Louis Wolfish's name.

MR. SCHATTEN: But the letters themselves are harmless letters. They are letters of a personal nature. There is no apparent reason why anybody would forge these particular letters in the 45-A series and 45-B series. That is one of the reasons why they are so clipped for exemplar purposes. There is no connection with the scheme to defraud. Death certificates is not mentioned.

THE COURT: While on the question of exemplar purposes, whatever the ruling is -- that is, assuming that the ruling is in your favor -- I don't want to forget to instruct you that this Government's Exhibit 66 in evidence, which bears the marking known at the bottom as well as questioned, which we have already discussed and where I sought to get some sort of definition from you as to what was meant by known -- that is, from the witness -- I will require that you obliterate that word "known" and substitute

some more as a word.

MR. SCHATTEN: How about exemplars from Exhibits 45-A and B, letters from Wolfish --

THE COURT: That will be more satisfactory, and I will instruct the jury accordingly.

I have gone through a fair portion of yesterday afternoon's transcript, and what is the connection if any from the mouth of your handwriting experts which brings together the 53 series and 45-A and 45-B.

MR. SCHATTEN: She testified on her direct examination -- and I will pursue this in light of Mr. Rosen's cross examination -- as to the connection between the exemplars and the questioned documents as well. I would like to pursue that.

THE COURT: During the course of her testimony yesterday she used the word exemplars as well you might expect to refer to 45-A and 45-B.

MR. SCHATTEN: Yes, sir.

THE COURT: I would, rather than interrupt her testimony in the presence of the jury, suggest you try to clarify as often as you can, so that we understand what she is talking about, that exemplar intends to mean the 53 series. Understandably, on her part she is using it more broadly.

Q Let me show you 66. I don't think I have to put the jury through -- I don't know where the copies are. Do you have them back?

MR. SCHATTEN: Yes.

Q I want you to tell the jury as best as you can -- and I am going to be referring to this, what we called yesterday, it looks like an EJ at the very bottom -- whether there is a difference in spacing on the questioned letters or what you say came from 45-A and B. Okay?

A Yes.

Q Tell us if there is a difference. Do you want to use your exhibit? Maybe that is easier.

THE COURT: I suppose this is as good a time as any to tell you at an earlier point you will recall the question came up as to what does the word "known" mean. That word appears on 66 in evidence, and it also appears on 63 in evidence. There was a definition elicited from Mrs. Tamir.

I have directed that that word "known" be stricken from 66, and I am going to ask it also be stricken from 63 in its present form, and I think you should -- I want you to disregard the word "known" to the extent it has been used in connection with 45-A and 45-B. I am informed by Mr. Schatten that he intends to change 66 in evidence

to substitute for the word "known" what words?

MR. SCHATTEN: Words to the effect indicating that they come from the letters, Government's Exhibits 45-A and 45-B -- that is, the letters from Wolfish at 25-10 30th Road, Astoria, New York, to Mrs. Marcia Wolfish, addressed "Dear Marcia and children,"

MR. ROSEN: I don't think that is accurate. They come from the originals, No. 1, of 45-A and B.

THE COURT: Yes, I think Mr. Schatten will concede that.

MR. SCHATTEN: Yes, of course.

MR.ROSEN: There has not been one word of testimony who wrote these letters.

THE COURT: You may consider -- I don't think Mr. Schatten contests that. Do you, sir?

MR. SCHATTEN: No, your Honor.

THE COURT: All right. Now, with all of that, you may proceed, counsel.

MR. ROSEN: Thanks, Judge.

BY MR. ROSEN:

Q Mrs. Tamir, would you look at your 66, which is the big copy of this, or the original of this, and tell us and tell the jury if there is a difference in your opinion in spacing between two bottom characteristics.

304a

THE WITNESS: Yes.

THE COURT: If you were to use a translation and Mr. Schatten has no objection, that may suffice.

Q I show you what has been previously marked 3555, which is a combination of an all Hebrew report of yours, a certification of translation and a translation, and I ask you to take a look at, obviously, the translation because it is the only thing I can understand.

A Yes.

Q You have seen the certification, have younot, that that is an accurate translation?

A That's what I wrote in my report, I wrote this in my Hebrew report. I wrote this, yes.

Q In other words, in your report you stated that the lack of an original presented you from making any conclusive determination?

A I'm sorry. I didn't state it this way. I said the photocopy prevents me. Not the lack of the original, and the reason was because the copy a very bad copy.

Q Mrs. Tamir, what is a bad copy, compared to a good copy?

A A good copy is one which shows all the particulars clearly so that one can see and study, whereas a bad copy is one where the details and parts of the letters and parts of

Q But you don't have any personal knowledge of anything written by the defendant, do you?

A I have 45-A and B.

Q Personal knowledge I asked you.

A Personal knowledge, no.

MR. ROSEN: Could I have that passport, please? Is it 9?

MR. SCHATTEN: We have three passports.

(Pause.)

Q In making your initial handwriting reports, did you inquire anywhere in the State of Israel whether they had documents which might contain the signature of the person that you are investigating?

A I have asked for the exemplars from Mr. Halpern.

Q You say exemplars. I think I am referring to something different. Exemplars are something you took in October. That is what we call exemplars.

Is that correct, Mr. Schatten?

MR. SCHATTEN: Why don't you put your question to the witness.

THE COURT: Let's agree on that, because I think it is important. There were exemplars taken in October of 1974, were there not, gentlemen?

MR. SCHATTEN: Yes.

done in front of you?

A Except the exemplars I haven't.

Q But the exemplars you say are not his true handwriting?

A They are disguised.

Q But that is another way of -- if you would like to go back there, it is okay. if you feel more comfortable. I don't have many questions.

(Witness returned to the witness stand.)

Q Let me see if I can put it another way. You have never seen handwriting by Louis Wolfish outside of the 53 series that we have marked in evidence, is that correct?

A That is correct.

Q And it is your testimony that the 53 series is not the true handwriting of Louis Wolfish?

A The natural handwriting, yes, sir.

Q The natural handwriting?

A Yes.

MR. ROSEN: I have nothing further.

MR.SCHATTEN: Nothing further, your Honor.

THE COURT: Mrs. Tamir, you may step down.

MR. ROSEN: Thank you.

(Witness excused.)

MR. ROSEN: I renew my motion based on the last

question and answer.

THE COURT: Denied.

MR. SCHATTEN: Your Honor, at this point the Government rests its case.

THE COURT: All right, ladies and gentlemen, I am going to ask you to step into the jury room for a few minutes. Please don't form or express an opinion about the case yet. Please don't discuss the evidence and don't discuss the case among yourselves or with anyone else. Please follow that admonition strictly.

Madam Forelady, you may lead the jury out.

(In open court, jury not present.)

THE COURT: Counsel, I will hear you. Mr. Rosen.

MR. ROSEN: Your Honor, most respectfully I hope your Honor's indication to the jury that they will be out perhaps only a few moments doesn't in any way limit what I think is -- well, limit my arguments on the motion.

THE COURT: No, it is in no way intended to. We will just stretch a few minutes into as long as it takes for you to make your argument.

MR. ROSEN: Your Honor, I guess there comes a point in time, as they said on television recently, that a prosecutor has to become a prosecutor and a judge has to make pretty tough rulings. I think your Honor has had

MR. ROSEN: The indictment charges that on September 20, 1971, the defendant unlawfully, willfully and knowingly did cause the life insurance company to send exhibit 6 through the mails. I am sort of paraphrasing to cut it down, Judge.

I would like to hand up exhibit 6 to the Court and ask the Court to dismiss count 1 on the ground that there has been no testimony, no credible testimony, no permissible inference or any intelligent suggestion that the defendant on or about that time anywhere, forget about Israel or Queens or New York, did cause the insurance company to send that piece of paper through the mail, and I am willing to accept, of course, with all the court has previously said, that we must take the government's proof in its most favorable light and I say if you expose the light in this room five million power, it's not going to help.

There was not even an attempt to tie the defendant in with this. I suggest, and this holds true for all three counts --

THE COURT: Count 1.

MR. ROSEN: Or do you want to do one at a time?

THE COURT: You want to speak to reasonable inferences while you are at it, which you know I must instruct the jury as to, if it suggests to them, that they are expected

jbcg 2

to draw, whether they are reasonable inferences the defendant or reasonable inferences the government would have them draw from the facts as they find them to be.

MR.ROSEN: That's correct, your Honor, and that is why I think, with all due respect, that your Honor must stop this case from getting to the jury.

There has been a wealth of periphery. I don't even call it circumstantial evidence. It is what the prosecution usually accuses the defense of doing, raising smoke screens. That is what we have. But what we do have are two very, very important factors in this case:

We have, number one, the testimony of Israel Horowitz who took the stand and when asked about the critical reception from the letter from Mr. Mack, I believe it was, containing the translations or certifications, he refused to testify, invoking the Fifth Amendment which your Honor advised him of and, again, when I think I asked him about his stationery, whether it was his stationery that was used to elicit that letter, again he took the Fifth Amendment.

I am not, as I said to the jury earlier, Perry Mason. I can't pick out either the perpetrator or co-conspirator or co-defendant who may have been a co-defendant. But what you have got here is a case where either the defendant alone or in concert with others may have perpetrated the

jgcg 3

scheme. I mean, that's about as far as the government can ask anybody to infer or find.

Yet, the mere fact that the money could have been collected upon the alleged demise of the defendant, the first question somebody might ask, "Well, who else could have done it or would have done it?"

Of course, it might be the defendant. I mean, the first thing -- the fact that he is here, as your Honor indicated yesterday, puts him behind the eight ball.

THE COURT: I don't recall indicating that but go ahead.

MR. ROSEN: Well, not the eight ball.

The government here has not shown that the defendant signed or has his handwriting, fingerprints or any other identification on any of the three documents which allegedly form the basis of this indictment. That is, exhibit 6, 9 and 10.

There is no connection between the defendant and exhibit 9, which is the $185,000 check; no one has testified, and I believe I see a little red mark that might be a dusting for fingerprints, but all Mr. Murray said is that somebody traced Marcia Wolfish's name. He didn't say the defendant did it. He said he didn't and couldn't identify the defendant's handwriting at all.

jbcg 4

No one has proved that the defendant had anything to do with exhibit 9.

Similarly, exhibit 10, the $20,000 check which was marked void. There is, again, no proof and I say about exhibit 6, your Honor, there is, again, no proof even if you give it the most favorable straining that I think the government will ask your Honor to do, it is still not sufficient to make that a prima facie case.

THE COURT: All right.

Mr. Schatten?

MR. SCHATTEN: Well, I think the first andmost obvious connection with the defendant as to Government Exhibit 9, the $180,000 check, is what happens to it. It goes into eight bank accounts, into the defendant's name, together with the name of his wife. So, that is one obvious connection.

The other obvious connection is that he has stipulated that he signed the change of address forms rerouted in the mail from Spring Valley into the Horowitz home and there has been testimony that the defendant did have access to the mail at the Horowitz home.

I would submit to the Court also that thereis much, much, much more and I just think I am wasting the Court's time to get into it further.

MR. ROSEN: Before your Honor rules, may I take that from the bench? I can see now that Mr. Schatten has made two references, obviously thinking he has landed on something about my stipulation about these change of address cards.

If I could have them, Mr. Schatten, maybe I could explain to the Court what I am talking about.

MR. SCHATTEN: Your Honor, perhaps I can make a suggestion. Perhaps it may be unwarranted on my part but, if MR. Rosen is going to continue, this might be a fair time to send the jury to lunch. But,I am just making that suggestion.

THE COURT: Well, perhaps so.

Tell the jury to go to lunch until 2 o'clock.

MR. ROSEN: Exhibit 21, the first change of address form, number 1, is dated July 7, 1970, from six months before the government even charges that the defendant concocted the scheme.

In my 35 years of life, I have moved approximately 20 times and each time -- I don't know if I used this form -- but I have asked the post office to transfer mail and I think practically everybody in this country, once or twice, or another time may have done that.

With reference to 21, which I have asked be

jbcg 6

stricken, I think, a couple of times, your Honor, this was done so far before even the thought, according to the government, of this scheme came into the defendant's mind. They say he formed the scheme in December of 1970. I mean, so what? Let me use the colloqual. What big deal is it that he asked the post office to transfer mail in July of '70, and I can see now the government is apparently going to make some kind of a big overture that this is a concession or something like that.

5-2 It is just a regular card. There must be forty million of them in existence.

THE COURT: Anything further?

MR. ROSEN: Yes. As to 21B, again, there is no showing that this part of any illegal scheme. If anything, I think it shows that 21A, I think, expires after six months. I know I can only get mail forwarded for six months: you have to put through another card. It just follows.

There is no connection with an illegal scheme. It is a form that can be picked up at any post office in this country.

THE COURT: Of course, this one is dated February 13, 1971.

MR. ROSEN: No, sir. It is dated December 15, 1970.

THE COURT: It was received. You are correct.

criminology. But, the case rests, I guess, on Mrs. Bahrav's or Mrs. Tamir, I would say basically. Nobody else hurts the defendant, most respectfully; even the newspapers have agreed with that.

But, Mrs Bahrav did not, and her testimony cannot be sufficient to let this case go to a jury. She was inconclusive.

She said, "I think it was the man."

Most respectfully, I say -- we have gone through this before, I know -- I say that the suggestive techniques by the prosecutor here have tainted her testimony and we are really shooting dice with this jury.

THE COURT: Tell me when you don't shoot dice with the jury.

MR. ROSEN: You shouldn't shoot dice with the jury.

THE COURT: When you say shooting dice, doesn't that mean that the jury may come back with a verdict of not guilty or they may come back with a verdict of guilty, and, if either of those choices are available to the jury, the trial judge has no choice but to give that opportunity to the jury.

MR. ROSEN: I say no.

THE COURT: The only time, as you know, in the

jbcg 9

United States versus Taylor, that I can refuse to give a case to the jury is if they cannot go down one or the other of those two roads.

MR. ROSEN: And I say that exists here. I say this jury cannot say that Louis Wolfish on the dates or at or about the dates and, no matter what place they say, caused these three items to travel through the United States mail. No one has identified Louis Wolfish as being the perpetrator, if you would, the author, the scrivener, who either generated or perpetuated or finalized this alleged scheme.

These account cards are inconclusive. The witness says "I don't know who wrote them." It's equally as possible for Mrs. Wolfish, Mr. Horowitz to have done it without the knowledge of the defendant.

THE COURT: Suppose the jury accepts Mrs. Tamir's conclusion that the writer of the 53 series was the writer of at least portions of 45A and 45B and was the writer of 30 in evidence? Suppose they accept that?

MR. ROSEN: So, what I say to the Court, that is not proof of this indictment. This is not a forgery case. This is a mail fraud case. He could have forged a million documents, --

THE COURT: Are you suggesting there was a way in which a death certificate could have been submitted for the

jbcg 10

benefits under the policy without their being a forged document submitted? Isn't a forged document essential to the payment being made for one Louis Wolfish, unless indeed Louis Wolfish was dead?

MR. ROSEN: Well, he is not dead and your Honor is right, but he didn't have anything --

THE COURT: How can you argue that if the jury believes that Mr. Wolfish, this defendant, was responsible for exhibit 30 in evidence, that they cannot conclude that it had a relationship to the payment of the benefits under the policies? Why must it considered to be so independent and isolated from the end result of what the government, through the grand jury indictment, charges?

MR. ROSEN: This is not a Title 18, Section 1955 case, use of interstate facilities to either extort or something like that. That would be something that the government could have done.

This is a specific mail fraud indictment which shows that the mails were used knowingly or could have been anticipated by this man.

Let's assume he forged Exhibit 30. Whether he did it in Israel or Queens, or Manhattan -- not forged it; I'm sorry -- altered it or wrote on it. That, in and of itself is not sufficient to sustain this mail fraud conviction.

THE COURT: Your point is, I dare say, that if he did it, assuming that for the moment, that is, changed exhibit 30 in evidence, to reflect his death, that he might have intended to send it by ship?

MR. ROSEN: No, Judge. That's too strained. I mean, sure, it's possible.

THE COURT: That doesn't make your point?

MR. ROSEN: No, sir. That is not what I am trying to drive at. I say there is a total failure to connect him with the mails but it is possible that he could have swam across with it.

Let's say he did it in Israel. There is no proof of where it was done but let's say he did it because he had his mother's death certificate there also. Let's say he did it to obtain benefits under the Israeli Survivor's Act, and wanted two deaths and let's say he was in the apartment -- by the way, he has never been placed in the apartment; he has never been placed with having anything to do -- I know the phone call, Judge. Well, your Honor, I mean I am going to ask your Honor to take the same position I am going to ask the jury. If they are going to believe that what I characterize as nonsense, that is just too strained; it is incredible, as a matter of law.

THE COURT: It's possible.

MR. ROSEN: Sure, it's possible, but there is a question of being realistic and believing the witnesses and other things.

But, I think your Honor is pointing to one thing -- Mrs. Tamir. She probably is the key to this case and, Judge, how any American Court -- I don't know what they do in Israel; they probably are fighting too much to worry about the precedences -- how an American Court can allow a foreign handwriting expert to testify notwithstanding the tremendous amount of qualified U. S. experts to testify -- I am sure they have everybody at their disposal -- to identify the defendant, never knowing what his true handwriting is, because she says --

THE COURT: She said it was not his natural handwriting.

5-3 MR. ROSEN: She doesn't know what his natural handwriting is.

THE COURT: She also testified that even when a person disguises handwriting, that it is still possible to draw certain conclusions on the part of someone who is an expert in the field.

MR. ROSEN: Shedidn't establish that at all, Judge.

THE COURT: Well, she testified to it. Whether she

jbcg 13

established it is not my decision. That is for the jury.

MR. ROSEN: Don't you think that, with all due respect, the precedent th t you cited, the Taylor case, that the court has an obligation, even independent of such a narror road, to take that when a case just doesn't meet the test of reasonableness at this stage, to throw this man into the jury and let them speculate -- "well, look at all the witnesses they had and look at what she said"?

I know we can try to pick it apart but that's where the inherent unfairness is.

For example, Mrs. Tamir says that in October she realizes that -- October of '74 -- she realizes that defendant is falsifying his handwriting. She obviously reports that to Mr. Schatten in some way, although she doesn' put it in the report. This is a very important thing.

Now, they come into this courtroom and they testif about falsification. Now, your Honor, I say that this was a violation of the Fifth Amendment Rights of Mr. Wolfish. I mean, if they are now saying he incriminated himself --

THE COURT: Wehave been through that, and I have made my ruling. If you mean about the exemplars --

MR. ROSEN: No. We haven't gone through this at all.

THE COURT: Which are you talking about?

jbcg 14

MR. ROSEN: I am talking about the fact that he falsified and now they come into court and say he has done something which he has either consciousness of guilt about, et cetera; they never made this known before, although they have known it since October.

I say she cannot use them, these exemplars, as any standard of comparison or no comparison.

THE COURT: I understand that is your argument.

What else do you have to say?

MR. ROSEN: I say that the government has totally failed to prove the essential elements that it is required to do at this stage of the proceedings. There is not a prima facie case made out as to any one of the three counts.

It is only a question of speculation and this speculation could, of course, irreparably prejudice this man.

I think that your Honor has a duty far and beyond that limited by the Taylor case and, when a case is so poorly structured as to indicate any semblance of guilt, it must be thrown out by the court.

THE COURT: Well, I will hear from Mr. Schatten but let me first react by saying that my duty is defined by the Taylor case and I propose to follow it. You know that there is a discipline imposed upon us that we must follow the

decisions of the Second Circuit Court of Appeals.

MR. ROSEN: Yes, sir, of course.

THE COURT: And you know that for many years we didn't have a Taylor case and there was a difference of opinion among trial judges as to just what the measure was. Taylor states that directly, plus subsequent cases which have spoken further about the matter.

MR. ROSEN: Right.

THE COURT: But go ahead, let me hear from you, Mr. Schatten.

MR. SCHATTEN: There are numerous places to start, but one such place is, let's take Mr. Rosen's concession that for the purposes of this argument we are to assume that Mr. Wolfish wrote Government Exhibit 30, which was the forged death certificate. We would submit that it is perfectly proper for the jury, from that, to infer that he was plotting and planning just exactly the kind of scheme to the fraud that is set forth in the government's indictment, the indictment returned by the grand jury -- namely, that he designed a scheme to defraud which contemplated the submission of a false death certificate on himself to the insurance company.

Again we not only have Mrs. Tamir's testimony. We have that testimony of Eva Bahrav who testifies that he was at the Israeli consulate in January of 1971, again with

documents, with his death certificate, the Louis Wolfish death certificate, and I think those two items, coupled with, as I say, other evidence in this case, make it perfectly proper for the jury to infer beyond a reasonable doubt that Louis Wolfish was, indeed, the perpetrator of this scheme to defraud.

I think there is a lot of evidence in this case and I think all of that is properly considered by the court.

MR. ROSEN: I would also like to say this:

I think your Honor held in abeyance the motions on the exhibits subject to connection and that has something to do with the end of my argument.

THE COURT: All right. I will hear you.

I suppose that to aid you I should tell you that I intend to instruct the jury that I have found sufficient connection and that they may, therefore, consider the evidence.

MR. ROSEN: As to 45 A and B as well?

THE COURT: 45A and B were really received. I raised a questin for Mr. Schatten to address himself to so that I might, myself, consider whether it should have been received with a limitation, but I do not see that I should have received it in any different fashion.

MR. ROSEN: Well, I would at this time move to strike from the record all exhibits received subject to con-

jbcg 17

nection on the grounds that they haven't been connected.

For example, exhibit 16, which is the typewritten note to the bank, saying "Deposit the money" -- am I right, Mr. Schatten?

MR. SCHATTEN: Yes, that is correct.

MR. ROSEN: What possible connection has there been to the defendant? I just make the objection, your Honor.

THE COURT: All right.

MR. ROSEN: Exhibit 9, the check. The government's handwriting expert, who couldn't identify the defendant as writing anything, said it was a tracing. He also conveniently forgot to say who did the tracing or that he doesn't know who did the tracing.

THE COURT: I think he answered the question and said he did not know who did the tracing.

MR. ROSEN: Yes, I think you are right, your Honor.

But, he didn't say that the defendant did it.

THE COURT: That's correct.

MR. ROSEN: I think that certainly qualifies it for the granting of a motion to strike as not being connected and I want to stress, your Honor, my objection to 21A, that change of address form that went in in July of 1970.

Unless the government is now amending its indictment

jbcg 18

to say that he thought this up five months previously, what possible relevance is there?

THE COURT: I don't think they have to amend it at all and I find relevance.

Now, it is beyond the period. That speaks for itself, but I don't come to the same conclusions you would have me draw.

MR. ROSEN: Okay. For all these reasons, I ask that the indictment be dismissed and the defendant discharged.

THE COURT: All right. I find that either of two results is possible -- a reasonable doubt or no reasonable doubt and, consequently, under Taylor, I find that I must let the jury decide the question.

Upon the jury's return, I will tell them that the evidence taken subject to connection has been, in my opinion, connected and give them a limiting instruction as to what that means and then we will turn to you, sir.

MR. ROSEN: Judge, for your own scheduling, I think I will be no more than an hour, tops, on the defense case, if that, and, then, I would most respectfully ask until tomorrow morning to go through this tremendous transcript. I don't mean it's a lot of papers, but,there is a lot of internal matter to it.

THE COURT: How long do you expect your closing

THE COURT: You take the same position on this?

MR. SCHATTEN: Yes, sir.

(In the courtroom, jury present.)

MR. ROSEN: Your Honor, at this time I respectfully renew my request for admission into evidence of Defendant's Exhibit M.

MR. SCHATTEN: No objection, your Honor.

THE COURT: Received.

(Defendant's Exhibit M received in evidence.)

XXX

BY MR. ROSEN:

Q I show you what is now marked Defendant's Exhibit N for identification and I ask you whether that is another report by the same document analyst in response to your request for fingerprint analyses in connection with this case?

A That's correct, it is.

MR. ROSEN: I most respectfully move its admission into evidence, your Honor.

MR. SCHATTEN: No objection.

THE COURT: Received.

(Defendant's Exhibit N received in evidence.)

XXX

MR. ROSEN: With the Court's permission, may I read it to the jury?

THE COURT: Yes.

mdrf 2

I will hear you, Mr. Rosen, on the motion.

MR. ROSEN: At this time, the defendant respectfully moves for an order dismissing the indictment, for a declaration of acquittal, or any other similar type disposition which reflects the fact that the Government notwithstanding its parade of witnesses has not even made out a semblance of a case that can be submitted to the jury and upon which the jury can fined guilty beyond a reasonable doubt.

I adopt all prior arguments concerning the failure of proof, most particularly the handwriting experts, in quotes, that the Government produced, Mr. Murray, Mrs. Tamir, who couldn't identify the defendant as being the same man who wrote anything known to them to be his signature.

For all the reasons set forth previously, and all the reasons that appear on the record made before your Honor, I respectfully move for a dismissal of the indictment.

THE COURT: Mr. Schatten.

MR. SCHATTEN: Your Honor, I believe with all due respect to my colleague, Mr. Rosen, that he is certainly misstating the thrust of Mrs. Tamir's testimony. Her testimony was, as I heard it, that even the disguised handwriting carries so many traits of similarity that handwriting experts such as herself was able to state, and conclusively, that based on her analysis Mr. Wolfish was indeed the man

mdrf 3

who put the black pencilled writings on Government's Exhibit 30. Not only that, with a plethora of other evidence, and of course refer to Eva Bahrav's testimony identifying the defendant with all of those death certificates at the Israeli Consulate, the search, and other items as well, which are in evidence here.

I believe for reasons similar to the Court's ruling this morning in denying defendant's motion at the close of the Government's case that a similar ruling is appropriate here.

THE COURT: I adopt the statements earlier made by the Court, and I deny the motion, Mr. Rosen, made by the defendant at this time.

MR. ROSEN: There is only one piece of unfinished business that I think I must alert the Court, and that is Court's Exhibit 8, which is totally in Hebrew. I have a translation of it. It is not certified or anything.

Mr. Schatten advised me he is having a translation. I think for the record we shouldn't have anything -- not that there is anything wrong with it, but that we shouldn't have anything solely in Hebrew in the record.

THE COURT: I think that is a good point.

MR. SCHATTEN: Defendant's Exhibit C will necessarily have to be in Hebrew. We of course have a translation

THE COURT: Yes. Granted in substance. I might note that is a measure of something, and need not suggest what, that 15, 16 and 17 cite as the authority for those requests cases ranging from 1953 to 1965, although it is used and has been used by every judge in this court right up to no doubt today.

Turning to the defendant's submissions, the first request is held until tomorrow morning. The second is denied. The third is denied. The fourth is denied as presently requested.

The fifth is granted in substance. The sixth is denied, except as to the last two sentences, which are granted in substance.

No. 7 is denied in the present form. However, the Court will charge with respect to the consideration to be given to expert testimony.

As to No. 8, Mr. Rosen, when you say "No comment whatsoever should be made," do you mean by whom, the Court, by Mr. Schatten?

MR. ROSEN: By the Government. I am requesting that your Honor charge that the jury draw no unfavorable inferences. I imagine it is standard.

THE COURT: I see. That is granted in substance.

MR. ROSEN: Also to the effect the defense has

to do nothing. I think you did that already before we commenced your Honor gave a rather extensive preliminary talk to the jury.

THE COURT: Of course Mr. Schatten won't, I am sure, alluded to the defendant's failure to take the stand.

As to the supplemental requests, supplemental request No. 1 I will hold until tomorrow morning. I think that is all I need to consider at this time.

There is one further point. I know that it is necessary for attorneys to make some references in their closing remarks to the law, and I certainly don't wish to limit what must be done in that regard, but I ask you not to usurp my function. Please don't undertake to tell the jury beyond the usual ways that attorneys ordinarily do what the law is applicable in this case.

In other words, I ask you to be circumspect, gentlemen, in this respect. If you do get into it, and if you go too far, then I will simply have to interrupt you and I don't wish to do that, and I don't think you wish to have that occur. So just be circumspect in that respect.

Is there anything further at this time?

MR. ROSEN: Yes, Judge. I most respectfully take

exception to the Court's granting of the Government's requests to charge, and all of them which were granted, and I take exception to the denial of those defendant's requests to charge which the Court denied.

THE COURT: All right. 10:00 o'clock tomorrow.

(Adjourned.)

the jury doesn't know who wrote it and, while I can appreciate that you would like to get it in to have them draw the inference that Mr. Wolfish wrote it, I don't see how we can get it to them so that they can have the opportunity.

The police file is all that I recall that we have -

MR. SCHATTEN: That is correct.

THE COURT: Maybe she wrote it but how does it get before the jury?

I have to deny your application.

I gather there is really no objection to this case being opened and Court's Exhibit 8 received.

MR. SCHATTEN: I have a copy here readily available.

MR. ROSEN: Can we attach the translation to it?

THE COURT: With the English version attached to the photocopy, yes.

If there is nothing further --

MR. ROSEN: Ther is, I think, one further thing before I give up, Judge, and that is that I have been advised that the government has or had or should have in its possession a report on a typewriter taken out of Israel Horowitz' home in Astoria, Queens, which report should show that some certain typing on documents in evidence in this case was done on Israel Horowitz' typewriter.

I don't know about it; I don't recall anything like that being furnished to us.

I would respectfully submit if such a thing exists it would fall under the Brady Rule and should be furnished to us.

If I am mistaken, it is because the information that was given to me since we were in court last is erroneous, but I think I should ask for it as a matter of record.

THE COURT: The first burden you have is to tell me why the matter you are talking to which, I gather, is a Brady matter, was not brought up before this time. We are minutes before bringing the jury in to hear closing arguments.

You have to convince me further, first, that whatever it is that you are raising now is a matter that could not have been raised during the course of the trial, even up to the very end before both sides rested.

MR. ROSEN: In conversation with the Defendant, conversation was related to me that he apparently had with Mr. Horowitz. I don't know when he had it but apparently he had it and it was never related to me and it indicated that the agents, postal inspectors, came into the Horowitz home, were refused permission to take out a typewriter that was there and took typewriting studies in the Horowitz home.

Maybe no report was done, but I have --

THE COURT: What is it that you wish to have done at this point?

MR. ROSEN: I would like to know from the government if my information is correct or not. If I have been misled, I will apologize to the government.

THE COURT: This case has been rested on both sides. I won't go on an expedition to fish out any lurking-in-the-background flaws, which may be arguments available to you for some post-trial purposes.

So, I will not even ask the question.

Is there anything further?

MR. ROSEN: I am ready to go, Judge.

THE COURT: All right.

MR. ROSEN: I respectfully except to your Honor's ruling.

THE COURT: This Court's exhibit 8, is it properly described as an Israeli Magistrate's decision? Can we describe it further? Regarding what?

MR. ROSEN: Regarding the return of certain documents to Mrs. Wolfish.

THE COURT: Is it documents?

MR. SCHATTEN: Yes. Regarding certain documents which were seized from the 4 Mewo Timna Street address in August of 1972.

check which the testimony was was cashed, deposited by the bank for collection of the insurance company. You can have Mary Lou Sciaraffo's testimony read back, but if you look at the endorsements you will see that this check was quite obviously deposited. The scheme was completed.

Mr. Wolfish at that point had his hands on eight bank accounts which he could draw on. The scheme was complete. Thrown up, I submit, is one more smokescreen.

The fact that at sometime somewhere down the road the insurance company may ultimately have gotten their money back does not in one iota change the nature of this very clever and very cunning scheme of defraud, the fact of the scheme to defraud, and the fact that the mails were used in furtherance of the scheme to defraud.

In other words, it is pure irrelevancy from the standpoint of your deliberations.

I am going to spend the remainder of my summation telling you of all the evidence pointing the finger of involvement in this scheme to defraud upon the shoulders of this defendant, Louis Wolfish.

The first clear, convincing item of evidence before you showing that Mr. Wolfish was indeed a party to this scheme to defraud was that avalanche of death certificates found in his home at 4 Mewo Timna Street,

conversation, that Louis Wolfish and Eliezer Leviathan are indeed one and the same individual.

THE COURT: We will take a recess in five minutes.

MR. SCHATTEN: Then we come to the testimony of Mrs. Varda Tamir. This is the woman who was the head of the Jerusalem Laboratory for the investigation of documents. She testified that she investigates documents throughout Israel, and you have to remember with Israeli witnesses, any foreign individual, their vocabulary -- I have to submit to you, you can appraise her yourself, Mrs. Tamir spoke a very, very fine English, but in the nature of things they are going to have perhaps a little bit of difficulty when people try to, attempt to confuse their testimony, although I must say, and I submit to you, that Mrs. Varda Tamir's testimony came out clear as a bell.

She identified Louis Wolfish as having his black pencilled handwriting on Government's Exhibit 30. This item here, where the defendant tried to convert the death certificate of his own mother into his own. A man named Moses on a Mount named Sinai brought for the Ten Commandments, and one of those commandments proclaimed honor they father and mother.

Bring Government's Exhibit 30, the forged death

certificate that has been tampered with, the forged death certificate being converted from the death certificate of Mrs. Rebecca Wolfish into the death certificate of Louis Wolfish -- bring that exhibit with you into the jury deliberation room and you will see the attitude toward those Ten Commandments exhibited by this defendant Rabbi Wolfish.

Then Mr. Rosen points out in his examination about the disguise, and he was saying, well, how can anybody tell when somebody is disguising something.

Here is Mrs. Tamir's testimony on the subject:

"First, I tried to dictate him full words but he wouldn't write full words," this is at page 757.

"And asked me to spell each letter separately. So all along the dictation I spelled each letter separately.

"Then he wrote in a fantastic form and start and wrote in a position to Hebrew writing. Hebrew writing is written from top to bottom."

Here is her chart. She indicated this right over here in these letters, top to bottom. She went on, "But as Mr Wolfish started his letters all at the bottom and went up like this," and she demonstrated.

Ladies and gentlemen, I think it is as clear that Mr. Wolfish, if he followed that procedure -- and her

testimony was that he did, indeed -- had disguised his handwriting just as easily as if I were going to write my script letters backwards, you can tell if you try to do the same thing that would be an obvious disguise, ladies and gentlemen.

I don't think it takes any great expert to tell when somebody is writing the language in a completely opposite way to the way in which it was written. That's what her testimony was.

She goes on at page 758:

"The ordinary writing starts at the top and goes down. For instance the letter H goes this way and then this way, but the letter K which appears in those charts, this is the direction," and she goes on, "There are a few letters which start at the bottom, like this one," she was referring to that last letter on the left, "During the dictation Mr. Wolfish all the time changed directions. He wrote like this, and this letter like this, starting from the bottom and going upwards. It was his form of disguising."

Ladies and gentlemen, I submit to you isn't Mr. Wolfish's disguising of his own handwriting another clear item of evidence which indicates a clear unmistakable evidence of guilt in this scheme to defraud?

THE COURT: Might we not interrupt there and take about ten minutes. Don't talk about the case now, please, among yourselves, or with anybody.

(Recess.)

MR. ROSEN: Your Honor, I didn't want to interrupt Mr. Schatten, but I think I did signal your Honor I didn't want to waive anything as he was going on.

I think the Government has now finally risen to a new low in citing to the jury in summation the Ten Commandments and the express charge in pointing at the defendant and accusing him of defiling the memory of his mother and violating one of the Ten Commandments.

If there is anything that could be prejudicial and have no place in this courtroom or no place in any record, that this can be taken from and put in front of this jury I say that this is a serious prejudicial violation of what we all know is a fair trial, and I think the prejudice is clear and I am constrained at this time to most respectfully move for a withdrawal of a juror and the declaration of a mistrial.

THE COURT: The application is denied. During the course of the trial there was testimony that the defendant's mother had died. It is the Government's contention through the evidence presented here that the mother's death certificate was used in various respects

to help the defendant prepare a forged death certificate which he allegedly used here for various claimed purposes.

So, what we have is Mr. Schatten engaged in a discussion of the facts as he contends those facts to be, and we have him urging the jury to draw some inferences, namely, that if one would indeed take one's mother's death certificate and use it in the fashion the Government contends that it hardly represents honor of one's mother or father.

I concede that it is rather overdrawn and overly dramatic, but I don't find it to be so prejudicial, in view of the fact that indeed these facts are in the record and he is free to discuss the facts as he purports those facts to be, and he is free to suggest to the jury such inferences as he would have them draw, so I deny your motion.

MR. ROSEN: My second motion is to instruct the jury to disregard whatever it is Mr. Schatten wrote on the board. I wrote on the board in the presence of witnesses and it was for the purpose of illustration to a witness who was here and saw me write. What he has written doesn't have any place in the trial and I ask it be stricken.

THE COURT: I don't understand the difference between your writing on the board as you did and his

testimony was that not only did she testify to the fantastic forms and the attempted disguises that the defendant Mr. Wolfish used in October of 1974 when he was submitting those exemplars in response to a court order ordered by Judge Pierce, she also testified that in her analysis she used the disguised exemplars in further conclusively determining that Mr. Wolfish was indeed the author of the black pencilled notations on Government's Exhibit 30.

She also testified that she had Hebrew handwriting from Marcia Wolfish and Israel Horowitz and determined that they were not the authors of that exhibit.

She testified as to the manner in which she used the exemplars given in October by Mr. Wolfish in her presence. Reading now from page 900 -- and I think Mr. Rosen's characterizations of her testimony were a little more, with all due respect, than mischaracterizations.

"Would you tell the Court and jury" -- this is my redirect examination -- "the manner in which you utilized the exemplars you took in October of 1974 to determine that Mr. Wolfish wrote the black pencil notations that appear on the death certificate in evidence as Government's Exhibit 30?"

Page 900 of the transcript, "Well, apart from

the disguise of the forms of the letters and of writing the letters upside down there remained some of the characteristics of the writing. May I show to the Court" -- and she gave just one example; she obviously had numerous examples but gave only one, which Mr. Rosen tried to distort as being the only example, "May I show to the Court for example, this word on Exhibit 63, which is marked 53-A and is on the left side of the chart, the first line, the second word, is exactly the same word as is here."

She pointed to this word, and on all of Mr. Wolfish writing this middle letter -- she testified Hebrew writing unlike English writing is written from the top to the bottom.

She picked out this word right here and indicated that when Mr. Wolfish wrote this particular word even on the disguised exemplars, unlike the way Hebrew is normally written where people start at the top and write below, this middle two letters, I believe it is, he doesn't start at the top, he starts a way down.

The same thing is true on all of the writings on Government's Exhibit 45-B, and also on 30. You can see it. The first letter and the last letter start somewhat higher, and the middle two letters start somewhat

I ask you to render a fair and just verdict in accordance with your oath, in accordance with the instructions and law that Judge Pierce will soon be delivering to you.

Thank you all very much.

THE COURT: Well, I am going to ask you just stand in place and let the blood circulate a little bit and then I'll start the charge.

Mine is going to be the shortest of the three presentations.

Charge follows at this point

THE CLERK: The Court is about to charge the jury. Any spectator wishing to leave the courtroom will do so now or remain seated until the completion of the Court's charge.

THE COURT: Well, now, counsel, Madam Forelady, ladies and gentlemen of the jury: Let me thank you for your cooperation during this trial. It has been somewhat long as a lot of these cases go and I have watched you carefully and you have paid strict attention as the evidence has been presented, and this is important in any case -- it is especially important in a criminal case.

Now, in serving on the jury, you make sacrifices, personal sacrifices, but you also make an important contribution to the fair and impartial administration of justice and for all of this, we wish to express our thanks to you.

I wish to thank the attorneys for their cooperation during this trial. They have represented their respective positions with serious dedication. I ask you now to give me the same degree of attention which you have given thus far, so that you might understand the principles of law which are applicable in this case.

First, let me point out some general principles as to your duty, as to what you may and may not consider during your deliberations.

It is the judge's function to instruct you as to the law which applies here. It is your duty to accept the law as I state it to you and it is your duty to apply the law as I state it to you to the facts as you find those facts to be during your deliberations. I ask you not to single out any one instruction alone as stating the law but, rather, consider the instruction as a whole and the logical result of your application of the law to the facts as you find those facts to be in this case should be a verdict of either guilty or not guilty.

You are the sole and exclusive judges of the facts in this case. You pass upon the weight of the evidence; you determine the credibility of the witnesses; you resolve such conflict as may exist in the evidence; you draw such reasonable inferences as may be warranted by the testimony and the exhibits in this case.

With respect to any matters of fact, it is your recollection and only yours which governs. Anything that the attorney for the government or the attorney for the defendant may have said with respect to any

matters in evidence or as to any factual matters is not to be substituted for your own independent judgment, your own independent recollection of the evidence and the facts in this case and, similarly, anything which I have said or may say with respect to any matters in evidence or as to any factual matters is not to be taken in lieu of your own independent recollection. You are the judges of the facts.

You are not to assume that I have any opinion as to whether or not this defendant is guilty or not guilty or as to the truth or the falsity of the charges asserted in the indictment. The fact that I have asked questions from time to time, denied motions or granted motions in the course of this trial, is not to be taken by you as any indication that the defendant is believed by the Court to be either guilty or not guilty.

Further, counsel have the right on the offer of certain evidence to press legal objections and, in doing so, they are simply performing their duties.

In your deliberations to determine the facts and whether the government has established the elements of the crimes charged, you are to consider solely the testimony which you have heard from the witnesses, any stipulations of fact which the lawyers have agreed upon,

the exhibits which have been received in evidence and even any lack of material evidence, and nothing else.

You will recall that during the trial I received some evidence subject to connection and then, I think it was yesterday, I told you that I had found that it was connected. You are to draw no further conclusion from that than that I now or then was announcing that the evidence had been received without limitation, which meant that you could consider it -- nothing more.

As you approach the performance of your function, and that is the determination of whether the defendant is guilty or not guilty, please remember it is your duty to weigh the evidence calmly and dispassionately and without sympathy or prejudice for or against either party. Any defendant appearing before this Court is entitled to have a fair and impartial trial, regardless of any accidental characteristics and the fact that the government is a party here or that the prosecution occurs in the name of the United States of America entitles it to no greater consideration than that accorded to any other party and, by the same token, it is entitled to no less consideration. All parties, government and individuals alike, stand equal before the law.

The defendant on trial here has pleaded not

jbrf-5

guilty. Consequently, if the defendant is to be convicted, the government has the burden of proving each and every element of the crimes charged beyond a reasonable doubt. At a later point, I will go into what those elements are.

The burden of proving guilt beyond a reasonable doubt never shifts. It remains upon the government throughout the trial. The law never imposes upon a defendant in a criminal case the burden of calling any witnesses or producing any evidence. You may draw no unreasonable inferences against the defendant because he did not take the stand and testify.

In addition, you may not speculate as to why the defendant chooses not to testify nor may you speculate as to what the defendant might have stated had he chosen to testify. In every criminal case, there is a Constitutional rule which every defendant has the right to rely upon. It is the rule that no defendant is compelled to take the witness stand. It is the prosecution which must prove a defendant guilty as charged beyond a reasonable doubt.

A defendant is not required to disprove anything. He is not required to establish his lack of guilt.

Also, the defendant has no obligation to call any witness on his behalf or offer any evidence whatsoever.

jbrf-6

In short, it is up to the government to prove beyond a reasonable doubt every element of the crimes charged in the indictment. The defendant is presumed to be not guilty of the accusations contained in the indictment and this presumption continues not only throughout the trial but even during your deliberations in the jury room.

So, the presumption of innocence is sufficient to acquit a defendant of crimes charged unless the presumption is overcome by evidence that satisfies your mind beyond a reasonable doubt of the defendant's guilt. Unless you are so satisfied, it is your sworn obligation to find the defendant not guilty. If you are so satisfied, it is your sworn obligation to find the defendant guilty.

So, the question then arises, what is a reasonable doubt. Well, it is a doubt which a reasonable person has after carefully weighing all the evidence; the kind of doubt which would make you hesitate to act in the most important affairs of your own life. Reasonable doubt is doubt which appeals to your reason, your judgment, your common sense and your experience. It is not caprice nor whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty, nor is it sympathy for any party.

If, after a fair and impartial consideration

of all the evidence or lack of evidence, you can honestly say that you do not have an abiding belief as to the defendant's guilt, then you have a reasonable doubt and it is your duty to acquit.

On the other hand, if after a fair and impartial consideration of all of the evidence, you can honestly say that you do have an abiding belief as to the defendant's guilt then you have no reasonable doubt, and it is your duty to convict.

A reasonable doubt does not mean positive certainty beyond all possible doubt. The law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

From time to time, you may have heard references made to direct evidence or to circumstantial evidence or both. Let me explain the difference between the two:

Direct evidence is where a witness testified to what he or she saw, heard or observed and knows of his or her own knowledge; something which comes to the person by virtue of that person's senses. That is direct evidence.

Circumstantial evidence is evidence of facts

and circumstances from which one may infer connected facts which reasonably follow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is a fact or a series of facts in evidence which have a logical tendency to lead the mind to a conclusion that another fact exists, even though there is no direct evidence to that effect.

Let me give you a simple example:

If you should find that you have a mouse running around the kitchen at home, coming through a hole alongside the waterpipe and if you should plug up the hole that the mouse apparently comes through with steel wool and then if you should leave a box of crackers out on a table in the kitchen and leave your home for a few hours and then come back and you find the box of crackers, which was otherwise intact, now has a hole in the bottom corner, say about an inch in diameter, then you look down at the waterpipe and you find that the steel wool which you had stuffed down alongside the pipe has been pushed away, you could conclude that the mouse had pushed aside the steel wool and come through the hole by the waterpipe and reached the box and made a hole in it -- now you would arrive at this conclusion from circumstantial evidence. In other words, you would infer

jbrf-9

on the basis of reason and experience from one or more established facts the existence of some further fact.

Now, a conviction may not rest upon suspicious circumstances alone. However, circumstantial evidence, if believed, is of no less value than direct evidence, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant.

There are times when different inferences may be drawn from the same facts, whether proved by direct or by circumstantial evidence. The government asks you to draw one set of inferences; the defendant another.

It is up to you and it is for you alone to decide what reasonable inferences you choose to draw from the evidence in this case. Indeed, it is your duty to determine the reasonable inferences to be drawn from the facts as you find those facts to be from the evidence. However, you may not indulge in guesswork or speculation.

Now, there are a number of factors which are not evidence in this case and which you may not, under any circumstances, consider during your deliberations. First, if during the course of the trial a question was asked and an objection was interposed and if I sustained the objection, then you are to disregard the question and any alleged facts contained in the question.

jbrf-10

If there was an answer to that question, you are also to disregard the answer.

Similarly, if I ruled that an answer be stricken, you are to disregard the answer and the question in your deliberations; they are not evidence and, therefore, cannot be considered by you in any respect.

As I told you at the beginning, an indictment is not evidence. It is simply a procedure by which persons accused by a grand jury of crimes are brought to trial. Whether the person accused is guilty or not guilty of the crimes charged is determined by a trial jury, such as you are.

You, as jurors, are the sole judges of the credibility of witnesses and the weight their testimony deserves. You know that there is no automatic way to tell who is telling the truth and who is not. Credibility can be equated with believability. If a witness is credibile, we say he or she is believable. You should carefully scrutinize all the testimony given both on direct and cross examination -- in fact, on all of the examination and the circumstances under which each witness has testified and every matter in evidence which tends to show whether a witness is worthy of belief. Consider the witness's ability to observe the matters

as to which he or she has testified and whether the witness impresses you as having had an accurate recollection of these matters. A witness may be discredited or impeached by contradictory evidence or by evidence that at other times the witness made statements inconsistent with the witness's present testimony here. If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

When judging credibility, consider any relation any witness may bear to any side of the case. Consider the manner in which each witness might be affected by the verdict and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

The ultimate question for you to decide in passing on the credibility of witnesses is: Did the witness tell the truth before you.

It is for you to say whether a witness's testimony at this trial was truthful or untruthful in whole or in part and, if you find that any witness has wilfully testified falsely as to any material fact, you may reject the entire testimony of the witness or you may accept

such portion of it as you believe to be true.

Now, it is the duty of the government in this case to prove the identification of the defendant as the perpetrator of the crimes charged beyond a reasonable doubt in order for you find the defendant guilty of the crimes charged. If the government fails to do so, then the defendant is entitled to an acquittal. You determine the question of identification by the direct evidence and the circumstantial evidence that has been adduced before you here.

It is for you to determine from the evidence whether or not there has been a proper identification of the defendant and whether the defendant before you has committed the crimes charged in the indictment.

There has been testimony in this case from witnesses, including Mrs. Eva Bahrav of the Israeli Consulate, concerning the identity of the person allegedly involved in this alleged scheme to defraud. As with all the evidence, you are the sole judges of the credibility and weight of that evidence.

In assessing the weight to be given to that evidence, you may consider all the circumstances revealed by the evidence concerning the witness's observations, as well as all the circumstances revealed by the evidence

concerning the witness's in-court identification. You may also consider that errors in photographic identification can occur and that these errors may affect a subsequent in-court identification.

Identification testimony, like other evidence, may be fallible. However, taking this possibility into account, it remains your sole province as jurors to assess the credibility of the witness Bahrav's testimony and to give it the weight you believe it deserves under all the circumstances.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call expert witnesses. Witnesses who by education and experience have become expert in some science, profession or calling may state their opinions as to relevant and material matter in which they profess to be expert and they may also state their reasons for their opinions.

In this case, Mr. Murray and Mrs. Tamir were presented by the government as handwriting experts. Where the genuineness of handwriting is in issue, any proved handwriting of a person may be received in evidence to be used as a specimen for comparison with the handwriting in dispute.

jbrf-14

A handwriting expert may state his or her opinion as to whether documents in evidence were written by the same person by comparing the handwriting in dispute with a proven specimen. You have the right to determine the weight to be given to such expert testimony. Should you decide that an expert witness is biased or prejudiced or that the opinion of the expert witness is not based upon sufficient education and experience or should you conclude that the reasons given in support of the opinion are not sound or should you feel that it is outweighed by other evidence, you may accept such portion as you deem appropriate or you may disregard the opinion entirely.

With respect to the testimony concerning the use by the defendant of a name not his own, if you find that the defendant used a name other than his own in order to avoid subsequent identification in connection with acts charged here, that would be a fact from which you may but do not have to infer any consciousness of guilt on his part.

I have admitted into evidence during the course of the trial Government Exhibit 43C, the testimony that was given under oath before a grand jury by Israel Horowitz. You may consider such testimony before the grand jury as evidence of the truth of the matters about which Mr. Horowitz testified and give it whatever weight and consideration you

think it should be accorded.

I should tell you further that as you are well aware, there have been several occasions during the course of the trial for the lawyers to confer with the Court out of your hearing. In such situations, you should in no way feel slighted. You are not to speculate as to what was being discussed. In the interests of justice, and to expedite a trial, it is necessary that conferences be held outside of the hearing of the jury. This further serves to avoid the inconvenience of having the jury constantly filing in and filing out as these matters arise.

It serves further to prevent the jury from being or becoming confused by technical, legal matters. In short, such conferences have been held during the conduct of this case to avoid having you listen to arguments on questions of law which concern only counsel and the Court.

This completes my general instructions with regard to what your duty and function is and with regard to what you may and may not consider in your deliberations.

Let me turn now to a discussion of the specific charges against the defendant and instruct you as to the essential elements which the government must prove beyond a reasonable doubt in order to sustain the charges against him.

As I told you at the beginning of the trial,

the defendant is charged with three separate violations of the mail fraud statute; that is, of Section 1341 of Title 18 of the United States Code, and that section, in part, reads as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, for the purpose of executing such scheme or artifice or attempting to do so places in any post office or authorized depository for mail matter any matter or thing whatever to be sent or delivered by the postal service or takes therefrom any such matter or thing or knowingly causes to be delivered by mail according to the direction thereon any such matter or thing, is guilty of a crime."

Before I go on to set out and explain the three elements, which the government must prove beyond a reasonable doubt in order to establish a violation or violations of this statute, let me read the indictment to you. It reads as follows, Counts 1 through 3:

"The Grand Jury charges:

"1. From on or about December 15, 1970 up to and including March 30, 1972, in the Southern District of New York and elsewhere, Louis R. Wolfish, the defendant,

unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud Bankers Security Life Insurance Company (Bankers Life) and for obtaining money and property from Bankers Life by means of false and fraudulent pretenses, representations and promises;

"2. It was part of said scheme and artifice that the defendant, Louis R. Wolfish, would and did falsely and fraudulently represent that he had died on January 7, 1971, and that he thereby would and did obtain $180,184.32 in death benefits from two life insurance policies issued by Bankers Life on his life and would obtain an additional $20,398.87 in death benefits from another life insuranee policy on his life issued by the Postal Life Insurance Company, which had merged into Bankers Life.

"3. It was further a part of said scheme and artifice that the defendant, Louis R. Wolfish, would and did fraudulently obtain and fraudulently submit to Bankers Life a document which purported to be a death certificate issued by the Minister of the Interior of the State of Israel, stating that Louis R. Wolfish died on January 7, 1971.

"4. On or about the dates set forth below, in the Southern District of New York, Louis R. Wolfish, the defendant, for the purpose of executing and attempting to execute said scheme and artifice unlawfully, wilfully and

knowingly did cause the Claim Department of Bankers Life in Washington, D. C., to place certain matter described below in post offices and authorized depositories for mail matter to be sent and delivered by the postal service and to be delivered by mail according to the directions thereon."

Count 1: Date: September 20, 1971.

Addressee: Mrs. Marcia Wolfish,
94 North Main Street,
Spring Valley, N.Y. 10977

Description of matter mailed: Letter.

Count 2: Date: December 27, 1971.

Addressee: Marcia Wolfish,
94 North Main Street,
Spring Valley, New York.

Description of matter mailed: Check for $180,484.32.

Count 3: Date: January 24, 1972.

Addressee: Mr. Howard Blatt, General Secretary, Bankers Security Life Insurance Company
102 Maiden Lane, NY NY.

Description of matter mailed: Check for $20,398.87.

Title 18, United States Code, Section 1341.

Now, to establish that the defendant, Wolfish, is guilty under any of the mail fraud counts charged in the indictment that I have just read to you, the government must prove beyond a reasonable doubt each and every one of the following elements, and there are three of them:

One, that during the time period alleged in the indictment -- that is, from on or about December 15, 1970 up to and including March 30, 1972 -- the defendant, Wolfish, devised a scheme or artifice to defraud or to obtain money or property by means of false and fraudulent pretenses, representations or promises;

Two, that in so doing, the defendant acted wilfully, unlawfully and knowingly and with intend to defraud; and,

Three, that pursuant to such scheme, the defendant did use the mails or did cause the United States mails to be used in order to send the letter or check referred to in the particular count which you may be considering.

Let me go into each of these elements in somewhat more detail.

The first element of the offense charged in Counts 1, 2 and 3 is the existence during the time alleged in the indictment of a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises.

I will give you some brief description to aid you in understanding this element. The word "scheme" and the word "artifice" as used in this statute include any plan or course of action intended to deceive others.

The indictment charges that the defendant devised

or intended to devise such a scheme or artifice. To devise simply means to formulate or to contrive or to bring about. In addition, the indictment charges that as part of the scheme, the defendant made certain misrepresentations. These include the misrepresentation that the defendant, Wolfish, had died on January 7, 1971, and that the defendant fraudulently obtained and fraudulently submitted to the Bankers Security Life Insurance Society a document which purported to be a death certificate issued by the Minister of the Interior of the State of Israel, stating that he, the defendant, had died on January 7, 1971.

With respect to this, it is not necessary that the government prove every misrepresentation or concealment alleged in the indictment. It is sufficient if the prosecution proves beyond a reasonable doubt that at least one material misrepresentation or concealment of a material fact was made in furtherance of the scheme or artifice to defraud.

However, you must be persuaded beyond a reasonable doubt of the existence of the scheme or artifice to defraud. In this connection, I charge you that the government need not prove that the defendant realized any gain from the scheme nor is it necessary that the intended victim suffer any loss whatsoever. The crime charged is the scheme and not the result of the scheme.

To conclude on the first element, if you find that the government has not proven beyond a reasonable doubt that the defendant devised a scheme or artifice to defraud as I have described it to you, then you must find the defendant not guilty of the charges brought. If you are convinced beyond a reasonable doubt of the existence of such a scheme devised by the defendant, then you must consider the second element and the second element is: That the defendant, Wolfish, in devising the scheme or artifice to defraud is alleged to have acted wilfully, knowingly and unlawfully and with intend to defraud.

Now, an act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or for some other innocent reason.

An act is done wilfully if it is done voluntarily and intentionally and deliberately and with specific intent to do something the law forbids; that is to say, to act with the purpose either of disobeying or disregarding the law. Unlawfully, of course, means contrary to law.

So, to do an act unlawfully means to do wilfully something which is contrary to the law. However, the government need not establish that the defendant knew he was breaking the law or any particular rule; that is, the government need not establish that the defendant knew he was

jbrf-22

breaking a particular statute.

Keep in mind that you must also find that the defendant acted with the intent to defraud. To act with intent to defraud means to act wilfully and with the intent to deceive or cheat, ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to one's self. However, again I instruct you that the evidence in this case need not establish that anyone was actually defrauded but only that the accused acted with the intent to defraud.

To put all this in more concrete terms under the second element, the government must prove to your satisfaction beyond a reasonable doubt that the defendant knew that Government Exhibit 1, the death certificate alleged to have been received by the insurance company and showing that Louis Wolfish died in Jerusalem on January 7, 1971, was a forgery and nevertheless involved himself in the alleged fraudulent scheme.

Now, in determining whether the defendant knowingly and wilfully and with the intent to defraud committed the offenses with which he is charged, issues of fact are presented and clearly, these issues concern what is in one's mind. It has been stated frequently that you bring into the jury box your everyday experience and your common sense.

Obviously it is not always possible to ascertain or prove directly the operation of the mind or the intention of the defendant. You can't look into his mind to see what his intentions were but you are able to consider all the facts and circumstances shown to you by the evidence and the exhibits in this case and you are able to draw your own conclusions with a reasonable degree of accuracy as to what if anything the defendant's intentions were.

Intent involves a mental attitude. From evidence of a particular act, coupled with evidence of surrounding circumstances, one may choose to draw certain conclusions. In other words, proof of the circumstances surrounding a person's actions can supply an adequate basis for a finding that the defendant acted knowingly and wilfully, if you choose to make that finding.

To summarize what I have said so far about the elements of the offenses charged, if you find that the government has proven beyond a reasonable doubt that the defendant devised a scheme or artifice to defraud, then you must also be persuaded beyond a reasonable doubt that in so doing, the defendant acted wilfully, knowingly and unlawfully and with the intent to defraud. If you are not so persuaded, then you must return a verdict of not guilty on all three counts.

Now, if you are so convinced beyond a reasonable doubt, then your task is not yet finished. You must then consider the third element of the offenses charged and the third element which the government must establish beyond a reasonable doubt is that in furtherance of the scheme to defraud, the defendant did use the mails or caused the United States mails to be used in order to send the letter or checks referred to in the particular count you may be considering.

Under the mail fraud statute, a scheme to defraud is a federal offense only if the defendant in any way, directly or indirectly, used the mails or caused someone else to do so in connection with the scheme.

Here the government contends that the defendant by means of false representations, including the submission of the forged death certificate, either directly or indirectly caused the insurance company to mail out Government Exhibit 6, a letter addressed to Mrs. Marcia Wolfish, dated September 20, 1971; Government Exhibit 9, the check for $180,000-odd dollars payable to Marcia Wolfish; and, Government Exhibit 10, the check for $20,398 payable to Marcia Wolfish -- in furtherance of the execution of the scheme to defraud.

Now, the letter or checks mailed in each of the

counts, or its contents, need not disclose any intent to defraud nor show on its face that it was mailed in furtherance of a scheme to defraud but it is necessary that the evidence in the case establish beyond a reasonable doubt that such letter or checks were wilfully caused to be mailed by the accused with the intent to help carry out the execution of the scheme to defraud alleged in the indictment.

One causes the mails to be used where he does an act with knowledge that the use of the mails will follow in the ordinary course of events or where such use can reasonably be foreseen, even though not actually intended.

While the use of the United States mails in furtherance of the scheme to defraud is an essential element of the offenses charged, it is not necessary that the defendant himself do any actual mailing or specifically intend that the mails be used. It is sufficient if the mails were in fact used in execution of the scheme to defraud and if the use of the mails by someone was reasonably foreseeable by the defendant.

There is one more item which I should mention with regard to the offenses charged. The counts of the indictment charge that the acts involved occurred on or about certain dates. It does not matter if a specific transaction set forth in the indictment is alleged to have occurred on or about a

certain date and the testimony indicates that in fact it occurred on another date, so long as there is a substantial similarity between the dates alleged in the indictment and the date established by the evidence.

Now, I have described the charges contained in each of the three counts in the indictment against the defendant here on trial. I have also outlined the essential elements of those counts. Again, you should note that a separate crime or offense is charged in each of the three counts of the indictment. Each charge must be considered separately. The fact that you find the accused guilty or not guilty as to one of the offenses charged should not control your verdict as to the other offenses charged.

Also, you are not to consider or in any way speculate about any sentence which a defendant might receive if found guilty. It is the function of the jury to deliberate and determine whether a defendant is guilty or not guilty on the basis of the evidence and the instructions of the Court. It is the function of the judge to determine the disposition of the defendant's case thereafter.

The most important part of the case is the part which you now, as jurors, are about to play because it is you who will have to decide whether the defendant is guilty or not guilty of the counts charged. I know you will try the issues

jb-27

that have been presented to you here in accordance with your oath you took as jurors and in that oath you promised that you would well and truly try the fact issues joined in this case and a true verdict render. If you follow that oath and try the issues without confusing your thinking with emotions, you will arrive at a just verdict.

As you deliberate, please be careful to listen to the opinions of other jurors as well as to ask for an opportunity to express your own views. No one juror holds the center of the stage in the jury room; no one juror controls or monopolizes deliberations. You must all express your views and exchange views.

If you become convinced that your original view was wrong with respect to any matter, don't be afraid to change your vote because of pride in your original position or your original opinion or in reaction to the stubbornness of another person.

On the other hand, do not surrender your honest belief solely because of the opinion of your fellow jurors or because you are outnumbered.

You understand, of course, that in criminal cases in this Court, your verdict on each count must be unanimous; that is, it must be joined in by each and every one of you. The form of the verdict will be either "guilty" or "not guilty"

jb-28

on each count of the indictment that is before you.

I will send in a copy of the indictment after you commence your deliberations.

During your deliberations, you may send for any exhibits in evidence that you may desire to review; you may request that any testimony be read back to you; you may request that any portion of this charge be read back to you. You may make these requests in writing. You will have the indictment in the jury room to aid you in your deliberations.

You are to remember that an indictment is not evidence; it is merely an accusation.

All of your requests, as I indicated, must be in writing and, finally, you are instructed that you must not reveal the standing of the jurors at any time during your deliberations; that is, you are not to indicate the split of any vote on any count for any verdict to anyone, including the Court.

Now, Madam Forelady, would you just take the jury inside for a few moments. Don't talk about the case yet, not yet, but just for a few moments, step inside there, please.

(The jury left the courtroom.)

THE COURT: Any exceptions, counsel?

jb-29

MR. SCHATTEN: I have none, your Honor. I thought it was a very fine charge.

THE COURT: Mr. Rosen?

MR. ROSEN: Your Honor, I most respectfully renew the objections I had made to the failure to charge certain requested defendant's charges and I take exception to the charges given to the jury.

Also, your Honor, most respectfully, I would like to inquire of your Honor as to whether you intend to have the jury deliberate now.

THE COURT: I don't intend to tell the jury but I intend to keep them just for a relatively short period of time -- from 30 minutes to an hour; that's all. Then we will resume tomorrow morning.

MR. ROSEN: Your Honor, most respectfully, I did not have an opportunity, although I told the Clerk, to mark certain items in today's newspapers. I would make an application to sequester this jury. The papers are running it now on page 2.

THE COURT: I will take that under consideration and I will ask, is the marshal in the courtroom? He is.

Do you wish to be heard on it, Mr. Schatten?

MR. SCHATTEN: I would have no objection at all to the jury continuing deliberations tonight, either. That would be --

361a

JUROR NO. 11: Louis Wolfish.

THE FOREMAN: Louis Wolfish.

THE COURT: All right, if you will select out 43-A and 55, and we will send those in.

There remains then the Court's instructions as to the three elements that constitute fraud, so I will read that section back to you.

Meanwhile, the jury's note will be marked as a Court Exhibit.

(Court's Exhibit 10 marked for identification.)

xx

THE COURT: Now, the defendant is charged with three separate violations of the Mail Fraud Statute. Unless you want me to read it, I will not read to you again that statute. Do you want me to read it to you again?

JUROR No. 10: We meant what constitutes fraud.

THE COURT: You want the elements?

JUROR NO. 3: Yes.

THE COURT: Then further I read to you the entire indictment. Since you have that, unless you want me to read it, I won't read that to you again, all right?

THE FOREMAN: Yes.

THE COURT: To establish that the defendant is guilty under any of the mail fraud counts charged in

362a

mdrf 8

the indictment the Government must prove beyond a reasonable doubt each and every one of the following elements.

One, that during time period alleged in the indictment -- that is, from on or about December 15, 1970, up to and including March 30, 1972, the Defendant Wolfish devised a scheme or artifice to defraud or to obtain money or property by means of false and fraudulent pretenses, representations or promises.

Two, that in so doing the defendant acted wilfully, unlawfully and knowingly, and with intent to defraud.

Three, that pursuant to such scheme, the defendant did use the mails or did cause the United States mails to be used in order to send the letter or check referred to in the particular count which you are considering.

Let me go into each of these elements in more detail. The first element of the offenses charged in Counts 1, 2 and 3, is the existence during the time alleged in the indictment of a scheme or artifice to defraud or to obtain money or property by means of false or fraudulent pretenses, representations or promises.

I will give you some brief definitions to aid you in understanding this element. The words scheme and artifice as used in this statute include any plan or course of action intended to deceive others. The

indictment charges that the defendant devised or intended to devise such a scheme or artifice. To devise simply means to formulate or to contrive or to bring about.

In addition, the indictment charges that as part of the scheme the defendant made certain misrepresentations. These include the misrepresentation that the Defendant Wolfish had died on January 7, 1971; and that the defendant fraudulently obtained and fraudulently submitted to the Bankers Security Life Insurance Society a document which purported to be a death certificate issued by the Minister of the Interior of the State of Israel, stating that he, the defendant, had died on January 7, 1971.

With respect to this it is not necessary that the Government prove every misrepresentation or concealment alleged in the indictment. It is sufficient if the prosecution proves beyond a reasonable doubt that at least one material misrepresentation or concealment of material fact was made in furtherance of the scheme or artifice to defraud.

However, you must be persuaded beyond a reasonable doubt of the existence of the scheme or artifice to defraud.

In this connection I charge you that the

mdrf 10

Government need not prove that the defendant realized any gain from the scheme, nor is it necessary that the intended victim suffer any loss whatsoever. The crime charged is the scheme and not the result of the scheme.

To conclude then on the first element, if you find that the Government has not proven beyond a reasonable doubt that the defendant devised a scheme or artifice to defraud, as I have described it to you, then you must find the defendant not guilty of the charges brought against him.

If you are convinced beyond a reasonable doubt of the existence of such a scheme, devised by the defendant, then you must consider the second element, and the second element is that the Defendant Wolfish in devising the scheme or artifice to defraud acted wilfully, knowingly, unlawfully, and with intent to defraud.

An act is done knowingly if done voluntarily and intentionally, and not because of mistake or accident or some other innocent reason.

An act is done wilfully if done voluntarily and intentionally and deliberately and with specific intent to do something which the law forbids. That is to say, to act with a purpose either of disobeying or disregarding the law.

mdrf 11

Unlawfully, of course, means contrary to law.

So to do an act unlawfully means to do something which is contrary to the law. However, the Government need not establish that the defendant knew that he was breaking a particular law or a particular rule.

Keep in mind that you must also find that the defendant acted with the intent to defraud. To act with intent to defraud means to act wilfully and with the specific intent to deceive or cheat. Ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain for one's self.

Again, I instruct you the evidence in this case need not establish that anyone was actually defrauded, but only that the accused acted with the intent to defraud.

To put all of this in more concrete terms, under the second element the Government must prove to your satisfaction beyond a reasonable doubt that the defendant knew that Government's Exhibit 1, the death certificate alleged to have been received by the insurance company and showing that Louis Wolfish died in Jerusalem on January 7, 1971, was a forgery, and nevertheless involved himself in the allegedly fraudulent scheme.

Now, in determining whether the defendant

knowingly and wilfully and with the intent to defraud committed the offenses with which he was charged, issues of fact are presented, and clearly these issues concern what is in one's mind. It has been stated frequently that you bring into the jury box the common sense and the experience of your daily lives. Obviously, it is not always possible to ascertain or prove directly the operation of the mind, or the intention of a defendant. You can't look into his mind to see what his intentions were, but you are able to consider all the facts and circumstances shown by the evidence and the exhibits in this case and you are able to draw your own conclusions with a reasonable degree of accuracy as to what if anything the defendant's intentions were.

Intent involves a mental attitude from evidence of a particular act coupled with evidence of surrounding circumstances one may choose to draw certain conclusions.

In other words, proof of the circumstances surround a person's actions can supply an adequate basis for a finding that the defendant acted knowingly and wilfully, if you choose to draw that conclusion.

To summarize what I have said so far about the elements of the offense charged, if you find that the Government has proven beyond a reasonable doubt that

the defendant devised a scheme or artifice to defraud, then you must also be persuaded beyond a reasonable doubt that in so doing the defendant acted wilfully, knowingly, and unlawfully, and with the intent to defraud.

If you are not so persuaded then you must return a verdict of not guilty on all three counts. If you are so convinced beyond a reasonable doubt then your task is not yet finished.

You must then consider the third element of the offense, and the third element which the Government must prove beyond a reasonable doubt is that in furtherance of the scheme to defraud the defendant did use the mails or cause the United States mails to be used in order to send the letter or checks referred to in the particular counts you are considering.

Under the Mail Fraud Statute a scheme to defraud is a federal offense only if the defendant in any way directly or indirectly used the mails or caused someone else to use them in connection with the scheme.

Here the Government contends that the defendant, by means of false representations, including the submission of the forged death certificates, as charged here, either directly or indirectly caused the insurance company to mail out Government's Exhibit C, which is a letter

addressed to Mrs. Marcia Wolfish, dated September 20, 1971: Government's Exhibit 9, the check for $180,464 payable to Marcia Wolfish; and Government's Exhibit 10, the check for $20,396 payable to Marcia Wolfish. In furtherance of the execution of the scheme to defraud.

The letters or checks mailed in each of the counts or its contents need not disclose any intent to defraud; or show on its face that it was mailed in furtherance of a scheme to defraud, but it is necessary that the evidence in the case establish beyond a reasonable doubt that such letter or checks were wilfully caused to be mailed by the accused with the intent to help carry out the execution of the scheme to defraud as alleged in the indictment.

One causes the mails to be used where he does an act with knowledge that the use of the mails will follow in the ordinary course of events or where such use can reasonably be foreseen, even though not actually intended.

Also, while the use of the United States mails in furtherance of the scheme to defraud is an essential element of the offenses charged, it is not necessary that the defendant himself do any actual mailing or specifically intend that the mails be used. It is

sufficient if the mails were in fact used in execution of the scheme to defraud as charged and that the use of the mails by someone was reasonably foreseeable by the defendant.

There is one more item which I should mention with regard to the offenses charged. The counts of the indictment charge that the acts involved occurred on or about certain dates. It does not matter if a specific transaction set forth in the indictment is alleged to have occurred on or about a certain date, and the evidence indicates that in fact it occurred on another date, so long as there is a substantial similarity between the dates alleged in the indictment and the date established in the testimony.

Now, before you go, I am afraid that you will be sequested for the evening. We have made arrangements for you at one of the hotels, and we have made arrangements for limousines. I may ask the marshal to make any telephone calls which you deem necessary, since obviously you had no way of knowing that this might happen. The marshal will notify your folks to make whatever calls are necessary.

Now, the purpose of sequestration is to assure that the parties here will receive a fair and impartial

set aside the conviction on the ground that the entire proceedings before your Honor and the jury were illegal and without foundation in law for the following reason: I have given Mr. Schatten just a brief opportunity to look at a document that was handed to me recently, and I represent to your Honor that it was given to me in the form which I will hand to the Court and ask that it be marked a court exhibit.

My understanding from the translation of the document is that the Israeli court in Jerusalem on I believe February 16, 1971 ruled that the seizure of papersand other paraphernalia from the Wolfish apartment was illegal and that the Israeli government's turnover of those papers and documents, some of which have been made exhibits at this trial, were similarly illegal; and I most respectfully ask the Court's consideration of this document and a ruling that would vitiate the judgment of conviction.

MR. SCHATTEN: I would like at an appropriate opportunity to respond, your Honor.

MR. ROSEN: At this point, if it please the Court, may I have it marked as a court exhibit?

THE COURT: Mark it.

MR. ROSEN: And subject to the translation being

accurate, which I believe it is, and again, your Honor, I don't understnad Hebrew, I would ask the Court's consideration on behalf of that motion.

xx (Court's Exhibit 1 was marked.)

MR. ROSEN: I have been advised by the defendant that the translation was certified as accurate by the Israeli Consulate. I think the document should speak for itself.

Secondly, your Honor, I'd also like to move the Court for an order vacating the judgment of conviction setting aside the verdict on the ground that defendant's rights under the Jencks Act and under Brady v. Maryland have been violated in the following two specific instances.

Court's Exhibit No. 4 which I believe was certain documents which your Honor perused in camera and were documents referring to the witness Gatti, and also I believe these are documents which refer to the seizure of Mr. Wolfish's apartment, or the seizure in Mr. Wolfish's apartment in Jerusalem. It is my understanding that these documents which your Honor ruled were not 3500 material, contain either telexes, memoranda or other communications between the United States Government and the Israeli Government which, most respectfully, I could have used upon the cross examination of Mr. Gatti.

Again I say to your Honor I believe that because, as your Honor well knows, I have never seen it. But it is my information, or information given to me from parties who have asserted to the defendant that they have seen those documents, and that they do relate to matters which should have been brought to the defendant's attention even before the suppression hearing in the case, and I can only say to the Court, not having any knowledge of what was viewed in camera, that if they do relate to anything that Mr. Gatti, a witness in this case, did or did not do, they should have been turned over to the defense for use in cross examination.

Again, all in a vacuum, your Honor, because I didn't see them. But I have reason to believe that they were pertinent documents.

THE COURT: You raised these issues at the time and I took them under advisement at the time and considered all the arguments advanced by you then, if you raised the issues.

MR. ROSEN: I believe your Honor did, and I believe your Honor sealed those documents.

THE COURT: And marked them as a court exhibit.

MR. ROSEN: I believe your Honor did.

Secondly, your Honor, I would like to move for

a vacator of the verdict on the basis again that the Jencks Act has been violated and/or Brady v. Maryland in that a typewritten report may either by the Israeli Government and turned over to the American authorities by the FBI would show that the typewriting of certain critical documents was done on the typewriter of one Rabbi Israel Horowitz, a witness in this case, who pled the Fifth Amendment before the jury. I believe under Brady it would be exculpatory to the extent of establishing that someone else may have or in fact did the typewriting that became so critical in this case.

That report I believe I raised at the very end of the trial, your Honor, if I am not mistaken, and again I apologize for an inaccuracy in recollection, but this is my best recollection. I believe that under Brady v. Maryland there is an absolute requirement imposed on the United States Attorney and that it is certainly in the nature of exculpatory material, and even if it wasn't exculpatory it might be deroggatory information which could be used again by the defense in the cross examination of the witness who was on the stand.

This was not done, although we had made the requests well before trial --

THE COURT: Counsel, you made these requests

before, did you not?

MR. ROSEN: Your Honor, I don't think I made the particular request as strong as I did before. I think I made the request for turnover, certainly before the summation of the defense.

THE COURT: In other words, you raised all of these points while they was still an opportunity for the matter to be dealt with while the jury was still in the box.

MR. ROSEN: I am quite confident I did.

THE COURT: And I ruled against you.

MR. ROSEN: If I didn't raise them, it was my negligence. And if I didn't, I raise them now. Finally, the defendant has asked me to on his behalf press your Honor for a hearing to poll the jurors on the question of whether or not the subject of the defendant's disbarment

THE COURT: You completed your record on that.

MR. ROSEN: Again, may I start again, with the Court's permission. The defendant is requesting me to press the Court for an order asking for a hearing to poll the jurors to see whether or not the question of his disbarment from the Bar of the State of New York Appellate Division was a subject matter of discussion in the jury room. The defendant has further indicated to me that

there appears to be a memorandum in existence taken by Mr. Benoit, the court reporter who took down most of the proceedings before your Honor, a memorandum which reflects a conversation that I had with a lady juror which I think would have been over before, your Honor, but for the record --

THE COURT: It is already on the record. The details of that are already on the record.

MR. ROSEN: Yes, sir.

THE COURT: Based upon a hearing or at least a discussion which we had on the record when the issue came up.

MR. ROSEN: Yes, sir. The defendant has asked me to urge that it was the Court's duty to inquire of Mr. Benoit in light of his memorandum to order a hearing to see whether or not this lady juror -- I forgot her number even at this point -- lady juror No. 7 in fact indicated to me in any way that the subject of disbarment did come up in deliberations and if it did, in what way was it raised. In that regard an evidentiary hearing has been requested by the defendant.

THE COURT: No evidentiary hearing has been requested since we discussed it in courtroom 501 previously and I ruled that any further proceedings undertaken in this regard were to be taken with the Court's

permission. You recall that?

MR. ROSEN: Yes, sir.

THE COURT: And I have had no application between then and now for any move to be made in this direction and this is -- you can see that this is your first occasion to raise the issue again?

MR. ROSEN: Yes, sir. I understand that. In connection with the motions I made before, perhaps I have forgotten, I would like to hand up to the Court and ask that a court exhibit be made of it and a copy which I am furnishing to Mr. Schatten.

Apparently -- I apologize for my voice, I have a little laryngitis, your Honor. An affidavit of the defendant with part of the transcript annexed referring to the Brady and Jencks Act problems that are referred to before. He has filed an affiavit on his own behalf.

THE COURT: I am not accepting an affidavit filed on his own behalf. That means he is acting as his own attorney. We have been through this many, many times before. Any affidavits filed which represent lawyer's documents have to be filed by his attorney. And you are his attorney.

MR. ROSEN: Would your Honor consider that I adopt and file it on his behalf?

THE COURT: No, sir. If you wish to file it in a formal fashion and append his submissions as a part of a lawyer's submission, then of course I will have to entertain it. But I am not going to allow the defendant to act as his own attorney, because he has an attorney and you are his attorney.

MR. ROSEN: May I proceed to the allocution on the sentence?

THE COURT: In other words, you have made your motions.

MR. ROSEN: I made all motions and renew all motions heretofore made and ask the Court to rule favorably on behalf of the defendant.

THE COURT: Do you wish to be heard?

MR. SCHATTEN: Yes, your Honor. In the first place, my understanding of this Israeli decision which apparently came down on February 16, 1975, approximately a month ago, I don't see why we should be in a position where the government for the first time, particularly in view of this case where other documents submitted in addition to the Israeli document have been forged, why we should have to at this stage see these documents for the first time, where the government is being asked at this sentence to translate Israeli documents.

USA-33s-523 - Notice of Readiness for Trial
Rev. 12/3/70

378a

SAS:gn
72-1510
d-929

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA :

- v - :

LOUIS R. WOLFISH, :

Defendant . :

----------x

NOTICE OF READINESS FOR TRIAL

73 Cr. 1036 (AB)

S I R S :

PLEASE TAKE NOTICE that the United States will be ready for trial in this case as soon as the matter can be reached by the Court on or after July 22, 1974 subject to receiving two days' advance notice of the actual date for trial.

Dated: New York, New York
July 8th, 1974

Yours, etc.,

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

By: Steven A. Schatten
STEVEN A. SCHATTEN (264-6425)
Assistant United States Attorney

TO: HONORABLE ARNOLD BAUMAN
United States District Judge

MICHAEL HORN, Esq.
Sano, Bacon, Nolan, Manley
39 East 68th Street
New York, N.Y. 10021

379a

73 Cr. 1036

U.S. DISTRICT COURT
FILED
APR 4 1975
S. D. OF N. Y.

Louis R. Wolfish
Defendant's REQUEST TO CHARGE #1

It is insufficient to base a mails fraud conviction on the mere fact that the mails were used to cary out a fraudulent scheme. It is necessary for the Government to prove beyond a reasonable doubt that the defendant had actual knowledge or should have foreseen that the mails would be used, rather than any other means of delivery, if, in fact, the jury is convinced that he did participate in the scheme charged. Applying this rule to the case at bar, if the jury were to be convinced that defendant did participate in the scheme charged, it still could not convict, unless it was convinced beyond a reasonable doubt that he knew Bankers Life would deliver the checks by mail or he should have foreseen that the mails would be used, as opposed to any other means of delivery.

U.S. v. Maze, _"S_, 94 S.Ct. 645 (1974)

380a

REQUEST TO CHARGE # V

In deciding whether defendant is guilty of mails fraud, the jury may not consider whether defendant, himself, used the mails to carry out a scheme and artifice, since the indictment does not charge him with personally using the mails.

381a

REQUEST TO CHARGE #3

In deciding whether defendant is guilty of mails fraud, the jury may only consider whether defendant, to carry out a scheme and artifice, caused the Claim Department of Bankers Life in Washington, D.C., to place certain matter . . . in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered by mail according to the directions, since that is the only act of mailing charged in the indictment.

382a

REQUEST TO CHARGE #4

The jury must disregard the identification of defendant by the witness EVA BAHRAV, if it finds that the photographic procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification. This means that if the jury finds that the pictures shown to the witness were so grossly dissimilar in appearance to the suspect as to give rise to a very substantial likelihood of irreparable identification, the jury must disregard the identification by that witness. The law requires that an identification be free of any "improper influences" and there must be no "unfairness" in the display of pictures. "Suggestive procedures" must not be used, and if they were and the jury finds that there was "a very substantial likelihood of misidentification," the identification must be disregarded.

Language taken verbatim from U.S. v. Wade, 388 U.S. 218 and Simmons v. U.S., 390 U.S. 377.

REQUEST TO CHARGE #5

If the jury finds that a witness testified falsely concerning one or more facts, it can disregard the witness' testimony concerning those facts or, if it chooses, disregard all of the witness' testimony. This rule applies to expert witnesses, as well.

384a

REQUEST TO CHARGE #6

Whenever circumstantial evidence is relied upon to prove a fact, the underlying circumstances must be proved and not themselves be presumed. An inference cannot be based upon an inference. In a criminal case, circumstantial evidence to justify the inference of guilt must exclude to a moral certainty every other reasonable hypothesis. Circumstantial evidence in a criminal case is of no value if the circumstances are consistent with either the hypothesis of innocence, or the hypothesis of guilt; nor is it enough that the hypothesis of guilty will account for all of the facts proven. Inferences may not be based upon conjecture, supposition, suggestion, speculation or other inferences. A conviction may not rest on suspicious circumstances.

385a

REQUEST TO CHARGE #7

The testimony of an expert must be treated in the same manner as the testimony of any ordinary witness. It is not entitled to any special consideration.

REQUEST TO CHARGE #8

No comment, whatsoever, should be made concerning defendant's failure to testify.

387a

משטרת ישראל

היחידה
התאריך
תיק מס'

לכבוד
שם המלוים ב

בקשה להוצאת פקודת חיפוש

לפי הסעיף 16 לפקודת הסדר הדין הפלילי (מעצר וחיפושים)

היאיל וב מתנהלת חקירה
היחידה
בדבר

מאחר ויש לי יסוד להזמין

את				
	השם הפרטי	שם האב	שם המשפחה	הפקן

נמצאים

הדרושים לצורך חקירה:

לפיכך הנני מבקש בזה לצוות על

לערוך חיפוש במקום(ות) המפורט(ים) לעיל לשם תפיסת חפצים חשודים.

החתימה

השימוש בית המשפט

בתאריך הוסיע בפני

השם	הדרגה	התפקיד	

ונתבע והנהיר מדברי בקשתו נכתבים.

החתימה

חותם השלום

3097 מ

1-68-500/100

Dept.: AHK/MHK/J-M
Date: Aug. 8, 1972
File no.: LA/03/6972

388a

For:
Justice of Peace in Jerusalem

APPLICATION FOR A SEARCH WARRANT

In the investigation department in the national headquarters in Jerusalem there is an investigation about a forgery of a death certificate and using it in order to collect life insurance money; and I have the reason to believe that

Louis	Izidor	Woolfish
First name	Father name	Last name

Jerusalem, 4 Mevo-Timnah St.
address

has documents connected with the above case, that are necessary for the investigation.

Therefore I hereby command the Israeli Police to search in the above mentioned place in order to find suspected items.

Signature 16372 David Cohen

For Court Use

On Aug 8, 72 appeared in front of me 16372 (No.) Sergeant Major (rank)

Cohen David
name

who swore and declared that all his statements are true and correct.

To make the requested search.
Issued the document on Aug. 8, 72

Signature signed
Justice of Peace

389a

Magistrate Court
in Jerusalem

(M.P. 1003/
(B.S. 52/
B.S. 220/

Regarding: Marcia Wolfish
By her representative lawyer R.Strauss
of 17 Ezrat Israel Street
Jerusalem.

The Petition

a g a i n s t

The State of Israel
by the police of Israel
Headquarters of the Jerusalem Region

The Respondent

(tial) On behalf of the petitioner: Lawyer R.Strauss
On behalf of the respondent: Deputy Commander Markus

D E C I S I O N

After hearing the arguments of the representative of the sides and after reviewing file No. 220/74 and the Court decision of 7/21/74, I am of the opinion that justice is with the petitioner who acts also on behalf of her husband, and that the respondent did not behave according to the law in transferring to the Government of the U.S.A the documents which were seized from Louis Wolfish and the petitioner without a decree of an Israeli Court or a decree of an American Court.

(tial) Therefore, I order the respondent to return to the petitioner within 7 days all the documents of the 64 documents seized on 8/9/72, which are in the possession of the respondent, excluding those documents that the respondent will claim are forged, and these will be turned over to the Court within the above mentioned period of time, in order to decide their disposition, after hearing the arguments of the involved parties.

I also order the respondent to see to it that within 60 days all the documents which it took from the possession of the petitioner without authority as mentioned above, will be returned to the petitioner or to Louis Wolfish, except for those documents that the respondent will claim are forged and those will be turned over to this Court within the above mentioned period of time, in order to decide what to do with them after hearing the arguments of the involved parties.

Issued and published today 5th Adar 735 (2/16/75) in the presence of the representative of the parties.

STAMP of The Magistrate Court
Jerusalem

A. Ben Zimra
Justice Magistrate Court
in Jerusalem

Copy corresponding to original
(partially illegible) Head
Magistrate Court Jerusalem

/s/(illegible signature)

390 a

DEC 16 1974

S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

LOUIS WOLFISH,

Defendant.

73 Cr. 1036 (L.W.P.)

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL

PLEASE TAKE NOTICE, that upon the annexed affidavit of Michael Rosen, sworn to the 12th day of December, 1974 and upon all the papers and proceedings heretofore had herein, the uncersigned will move this Court at a time and place to be fixed by the Court, for an order granting leave to defense counsel to withdraw as counsel of record in the above-entitled action, and for such other and further relief as to this Court may seem just and proper.

Yours, etc.,

SAXE, BACON, BOLAN & MANLEY
Attorneys for Defendant
39 East 68th Street
New York, New York 10021
(212) 472-1400

TO: HON. PAUL J. CURRAN
United States Attorney
Southern District of New York
United States Court House
Foley Square
New York, New York 10007
Attn: S. Schatten, Esq.
A.U.S.A.

391a

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA : 73 Cr. 1036 (L.W.P.)

- against - : AFFIDAVIT

LOUIS WOLFISH, :

Defendant. :

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MICHAEL ROSEN, being duly sworn, deposes and says:

1. I am a member of the firm of Saxe, Bacon, Bolan & Manley, attorneys for the defendant, and submit this affidavit in support of our motion to be relieved as counsel in the above-entitled action.

2. In recent months sharp differences have arisen between the defendant and my firm - most particularly your deponent - in the handling of this case. My client, a former lawyer, insists on making legal decisions in this case. Specifically, Rabbi Wolfish directed me to make certain motions which we thought were inappropriate. We refused to make the motions. I have been advised by the Rabbi, however, that he will be making these motions by himself, with my firm's name on the papers. I wish to advise the Court that I do not adopt or consent to any motions he may make.

3. Furthermore, my client has advised me on many occasions that, should we go to trial, he intends to deliver the summation to the jury himself. I have told the Rabbi that I will not try his case on that basis. However, he insists on such course of action.

4. In addition, I must advise this Court that promises were made to my firm regarding compensation for our work which, I am now advised by my client, cannot and will not be honored.

and Short, the Relationships between Rabbi Wolfish and our firm has deteriorated to the point where, as an officer of this Court and one who takes very seriously the burdens of a defense lawyer, I do not believe that I can represent him adequately.

5. I have advised the Assistant United States Attorney in charge of this case of the making of this motion. I thought it was appropriate to telephone him so that in the event the motion was granted, and, if the possibility of a postponement of the trial exists, he would not be inconvenienced or put to undue expense in getting ready for the January 6, 1975 date. Mr. Schatten informed me that he would vehemently oppose this motion. While I appreciate the government's general position, it must be called to the Court's attention that their failure to provide necessary discovery, as indicated in my letter to the government dated December 10, 1974, copy of which is attached hereto, would require a motion for a postponement in any event.

6. I have also advised Rabbi Wolfish of my intention to make this motion. The Rabbi advised me that he does not consent and opposes the motion.

7. I believe in the years since I left the United States Attorney's office and have been in private practice, this is only the second time I have ever asked a court to grant leave to withdraw as trial counsel in a criminal case. As I stated above, I can think of no higher calling or responsibility than that as a lawyer when a man's liberty and freedom are at stake. The reasons set forth above for the granting of this motion are made to this Court not only in good faith, but with deepest sincerity. I trust the Court will respect these reasons and relieve us as counsel in this case.

Michael Rosen
MICHAEL ROSEN

Sworn to this 12th day
of December, 1974

Anne Inglese

393a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA -against- LOUIS R. WOLFISH, Defendant.	73 CRIM. 1036 (LWP) NOTICE OF CROSS-MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Louis R. Wolfish, sworn to the 20th day of December, 1974, and upon all the papers and proceedings heretofore had herein, the undersigned will cross-move this Court at a time and place to be fixed by the Court, for an order directing a hearing to fix the value of the services of withdrawing counsel and to direct him to pay the balance to the undersigned, and for such other and further relief as to this Court may be deemed just and proper.

Dated: New York, N.Y.
December 19, 1974

Yours, etc.,

LOUIS R. WOLFISH
Defendant Pro Se
8210-19 Avenue
Brooklyn, N.Y. 11214
645-4624

TO: Hon. Paul J. Curran
U.S. Attorney
Southern District of
New York

Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York 10021

394a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	73 CRIM. 1036 (LWP)
-against-	
LOUIS R. WOLFISH, Defendant.	AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LOUIS R. WOLFISH, being duly sworn, deposes and says:

Michael Rosen, Esq., by affidavit sworn to the 12th day of December, 1974, has moved this Court to be relieved as counsel for deponent, assigning as his reason that differences have arisen between him and deponent in respect to pre-trial strategy (motions that should be made), as well as prospective trial strategy, assigning as his chief complaint deponent's plan to make his own summation, a strategic move successfully adopted by Mr. Rosen's employer, Roy Cohn, but which Mr. Rosen opposes for deponent, who, incidentally, had practiced law for a number of years. There is no doubt that where the differences between counsel and client become irreconcilable, the relationship that is based upon trust and confidence, must be dissolved. The very act of Mr. Rosen in bringing on this motion, and tactlessly revealing deponent's trial strategy, is enough for deponent to lose confidence in him and to destroy whatever was left of the attorney-client relationship.

However, it is submitted that deponent never hired Mr. Rosen in the first instance. He hired Roy Cohn, Esq., and paid him the sum of $3,500 to represent him. Mr. Rosen has been foisted upon deponent without his consent. Had deponent wanted Mr. Rosen

to represent him, he would have hired him, not Roy Cohn, Esq. Since the relationship of attorney and client is one of confidence, no attorney can foist another on a client, without his consent, as has been done in this case. By all means, Mr. Rosen should be relieved, not only because of the irreconcilable differences to which he makes reference, but more than that, because deponent engaged Roy Cohn, not him.

It is quite clear that Mr. Rosen works for Roy Cohn and therefore is acting on behalf of Mr. Cohn's firm in making this motion.

Mr. Rosen, in his moving papers, has neglected to mention that deponent has paid Roy Cohn, Esq., a $3,500 fee, for this case, which constitutes a fund that deponent requires to engage new counsel

The authorities are legion that this Court has the duty and power to fix the fee of outgoing counsel on a quantum meruit basis and direct him to return the balance to the client.

Mr. Rosen prepared for deponent motions for discovery and a bill of particulars and to suppress evidence, as well as opposition to the Government's motion for handwriting exemplars. It would be generous to put a value of one thousand ($1,000) dollars for this work, including Mr. Rosen's appearances at pre-trial conferences, entitling deponent to a return of two thousand five hundred ($2,500) dollars.

Where counsel is guilty of misconduct, he forfeits his fee. On October 3, 1974, deponent appeared at the office of Postal Inspector John Slavinski, pursuant to the order of this Court to give handwriting exemplars. Mr. Rosen failed to show up to protect deponent's interests after having previously assured your deponent that he would be present. It may well be that such misconduct may disqualify Mr. Rosen for any fee.

WHEREFORE, deponent prays that an order be made directing a hearing to fix the value of the services of withdrawing counsel and to direct him to repay the balance to the undersigned and for such other and further relief as to this Court may be deemed just and proper.

Louis R. Wolfish

Sworn to before me this
10 day of December, 1974.

Notary Public

LOUIS GOLDBERG
NOTARY PUBLIC, State of New York
No. 03-1475600
Qualified in Bronx County
Commission Expires March 30, 1975

397a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA -against- LOUIS R. WOLFISH, Defendant.	73 CRIM. 1036 L.W.P. NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of LOUIS R. WOLFISH, sworn to the 18 day of December, 1974, and all the proceedings heretofore had, the undersigned will move this Court at Foley Square, New York, New York, at a time and place to be fixed by the Court, for an order striking out the statement of readiness filed by the United States Attorney and dismissing the indictment for violation of the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases," and for a full hearing on the issues herein, and for such other and further relief as to this Court may be deemed just and proper.

Yours, etc.,

Dated: New York, N.Y.
December 18, 1974

LOUIS R. WOLFISH
Defendant pro se
8210 19th Avenue
Brooklyn, New York 11214

TO: Hon. Paul J. Curran
United States Attorney
Foley Square
New York, New York 10007

Saxe, Bacon, Bolan & Manley
39 East 68th Street
New York, New York 10021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA -against- LOUIS R. WOLFISH, Defendant.	73 CRIM 1036 L.W.P. AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

LOUIS R. WOLFISH, being duly sworn, deposes and says:

That he respectfully submits this affidavit in support of his application to strike out the statement of readiness filed by the United States Attorney and to dismiss the indictment for violation of the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases," and for a full hearing on the issues presented.

Deponent retained Roy Cohn, Esq. to represent him in this matter. Mr. Cohn's firm, Saxe,Bacon, Bolan & Manley, filed a notice of appearance on behalf of deponent. However, that law firm has recently filed a motion to be relieved as counsel in this matter, leaving deponent in a Sixth Amendment limbo at this time. In view of the act of counsel in asking to be relieved in this action, deponent has lost confidence in him and, therefore, is proceeding pro se, in exercise of his Sixth Amendment right to defend himself.

On the 15th day of November, 1973, a sealed indictment was filed against defendant, charging that "the defendant, for the purpose of executing and attempting to execute (a) scheme and artifice (to defraud Bankers Security Life Insurance Society out of life insurance benefits by submitting a fraudulent certificate

attesting to his own death), unlawfully, wilfully and knowingly did cause the Claim Department of Bankers Life in Washington, D.C. to place (a letter and two checks) in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service, and to be delivered by mail according to the directions thereon," in violation of 18 U.S.C. 1341.

A bench warrant was issued on November 15, 1973. However, before it could be executed upon and on the 14th day of February, 1974, defendant turned himself in. On the 4th day of March, 1974, he was arraigned and bail was fixed, which was immediately posted. The case was assigned to Judge Bauman and subsequently to Judge Pierce after the former resigned. On the 8th day of July, 1974, the Government filed a Notice of Readiness for Trial on or after July 22, 1974, pursuant to the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases." At that time, the case was still on Judge Bauman's calendar.

The Government was not ready for trial when the Notice of Readiness was filed, as attested by its application returnable a month later, on the 21st day of August, 1974, to direct the defendant to furnish the Government with handwriting exemplars in both English and Hebrew, which motion was granted by Judge Pierce on that day. On the 3rd day of October, 1974, in the office of Post Office Inspector Slavinsky, without the presence of counsel to protect his interests, and yielding to threats by United States Attorney Schatten that he would be immediately arrested and held in contempt of court, defendant gave the exemplars ordered of his handwriting and allegedly made statements.

The Notice of Readiness filed by the Government was false. The Government was not ready for trial, since it subsequently made a motion for additional evidence, to wit, handwriting exemplars

by defendant, which was not made until after the six month period required by the Government to be ready, in violation of the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases," that commenced to run from February 14, 1974. Since the Government filed a false Notice of Readiness and, in fact, was not ready within the required six month time and there were no "execptional circumstances" to excuse the violation of the Rule, the indictment must be dismissed.

WHEREFORE, deponent prays that an order be made and entered striking out the statement of readiness filed by the United States Attorney and dismissing the indictment for violation of the "Second Circuit Rules Regarding Prompt Disposition of Criminal Cases," and for a full hearing on the issues, and for such other and further relief as to this Court may be deemed just and proper.

Louis R. Wolfish

Sworn to before me this
18 day of December, 1974

Notary Public

401a

FILED
DEC 23 1974
S. D. OF N. Y.

ENDORSEMENT ORDER

At a pretrial conference held on this case the Court indicated that pretrial motions were to be filed by no later than August 30, 1974. The motion herein was filed well after the time period alloted had expired. In addition it appears that even though the defendant has retained counsel he has chosen to move pro se. The Court considers this an irregular procedure which under the circumstances should not be condoned. For these reasons the Court hereby declines to rule on the merits of the motion herein.

SO ORDERED.
Dated: New York, New York
December 19, 1974

LAWRENCE W. PIERCE
U. S. D. J.

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL [illegible]
(Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY.

FINDING & JUDGMENT

There being a [illegible]/verdict of { [ ] NOT GUILTY. Defendant is discharged
[X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and [illegible] devising and intending to devise a scheme and artifice to [illegible] means of false and fraudulent pretenses, representations and [illegible] unlawfully, wilfully and knowingly causing the Clerk [illegible] Bankers Security Life Insurance Society to place certain [illegible] post offices and authorized depositories for mail matter, [illegible] United States Code, Section 1341.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

and ONE-HALF(3 1/2) YEARS on each of counts 1, 2 and 3 to run concurrently with each other. Pursuant to the provisions of Title 18, U.S. Code, Section 4205(a)(1), the defendant shall become eligible for parole after serving a term of ONE(1) YEAR.

Execution of sentence is stayed pending appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

[illegible] terms of probation imposed above, it is hereby ordered that the general conditions of probation set out on the [illegible] is imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at [illegible] period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke [illegible] during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

CERTIFIED AS A TRUE COPY ON THIS DATE 2/26/85

[illegible] CLERK

SIGNED BY

[ ] U.S. Marshal

Mrs. Pierce

403a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

LOUIS R. WOLFISH,

73CR. 1036 (LWP

Defendant

S I R S :

PLEASE TAKE NOTICE that the undersigned hereby appeals to the United States Court of Appeals for the Second Circuit from the judgment of conviction entered against him on the 31 day of March, 1975 inthe United States District Court for the Southern District of New York (Pierce, J.).

Dated: March 31, 1975

Yours, etc.,
L. Wolfish

LOUIS R. WOLFISH
Defendant Pro Se
64 Essex Street
New York, New York 10002
212-254-8601

TO: Clerk of the United States
district Court for the Southern
District of New York
Foley Square
New York, New York

HON. PAUL J. CURRAN
United States Attorney for
the Southern District
Foley Square
New York, New York